

**AGENDA OF THE REGULAR MEETING  
NATIONAL CITY JOINT POWERS FINANCING AUTHORITY  
COUNCIL CHAMBERS  
CIVIC CENTER  
1243 NATIONAL CITY BOULEVARD  
TUESDAY – JUNE 20, 2017  
FOLLOWING THE 6:00 P.M. CITY COUNCIL MEETING**

**OPEN TO THE PUBLIC**

**ROLL CALL**

**PUBLIC ORAL COMMUNICATIONS (Three -Minute Time Limit)**

**NON CONSENT RESOLUTIONS**

1. Resolution of the National City Joint Powers Financing Authority relating to the prepayment of 2010 Lease Agreement obligation, and approving related documents and authorizing official actions in connection therewith. (Finance)
2. Resolution of the National City Joint Powers Financing Authority Relating to the financing of a 2017 Energy Savings Contract, and approving related financing documents and authorizing official actions in connection therewith. (Engineering/Public Works)

NOTE: Pursuant to State Law, items requiring Authority action must be brought back on subsequent Authority agenda unless they are of a demonstrated emergency or urgent nature.

**ADJOURNMENT**

Next Regular Joint Powers Financing Authority Meeting of June 5, 2018 -  
6:00 P.M. - Council Chambers, Civic Center

Upon request, this agenda can be made available in appropriate alternative formats to persons with a disability in compliance with the Americans with Disabilities Act. Please contact the City Clerk's Office at 336-4228 to request a disability-related modification or accommodation. Notification 24 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

## NATIONAL CITY JOINT POWERS FINANCING AUTHORITY AGENDA STATEMENT

**MEETING DATE:** June 20, 2017

**AGENDA ITEM NO.**

**ITEM TITLE:**

Resolution of the National City Joint Powers Financing Authority Relating to the Prepayment of 2010 Lease Agreement Obligation, and Approving Related Documents and Authorizing Official Actions in Connection Therewith

**PREPARED BY:** Mark Roberts, Director of Finance      **DEPARTMENT:** Finance

**PHONE:** 619-336-4265

**APPROVED BY:** Mark Roberts

**EXPLANATION:**

In connection with the refinancing of prior lease revenue bonds issued to fund the construction of the Police headquarters building, the Authority executed a lease agreement by and between the City of National City and the Authority dated September 1, 2010. Further, in an assignment agreement, the Authority assigned to Bank of America, NA, certain of its rights, including its right to receive lease payments. The 2010 lease agreement provided that the City could prepay its obligations and has elected to make the final payment on the lease in early July 2017 instead of on the regular payment date of October 1, 2017. This resolution will authorize, upon the final payment on the lease, the termination of the lease agreement and assignment agreement and authorize the conveyance of all of the Authority's right, title, and interest in the Police Headquarters site to the City.

**FINANCIAL STATEMENT:**

**ACCOUNT NO.** N/A

**APPROVED:** Mark Roberts      Finance

**APPROVED:** \_\_\_\_\_      MIS

**ENVIRONMENTAL REVIEW:**

This is not a project and, therefore, not subject to environmental review.

**ORDINANCE:**    **INTRODUCTION:** ☐    **FINAL ADOPTION:** ☐

**STAFF RECOMMENDATION:**

Adopt the resolution.

**BOARD / COMMISSION RECOMMENDATION:**

**ATTACHMENTS:**

1. Resolution
2. Grant Deed (2010 site)
3. Termination Agreement



AFTER RECORDATION RETURN TO:

Nossaman LLP

18101 Von Karman Avenue, Suite 1800

Irvine, CA 92612

Attention: Albert R. Reyes, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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### **TERMINATION AGREEMENT**

This TERMINATION AGREEMENT, dated as of June \_\_, 2017, is among the City of National City (the "City"), the National City Joint Powers Financing Authority (the "Authority"), and Bank of America, N.A. (the "Bank"):

### **WITNESSETH:**

WHEREAS, in connection with the refinancing of certain prior lease revenue bonds issued by the City, the City previously executed a Lease Agreement by and between the City and the Authority, dated September 1, 2010 and recorded on September 28, 2010 as File No. 2010-0514247 of the Official Records of San Diego County, California (the "2010 Lease Agreement"), pursuant to which the Authority leased to the City an interest in the real property described in Exhibit A hereto (the "2010 Site"); and

WHEREAS, pursuant to an Assignment Agreement by and between the Authority and the Bank, dated September 1, 2010 and recorded September 28, 2010 as File No. 2010-0514248 of Official Records of the Official Records of San Diego County, California (the "2010 Assignment Agreement"), the Authority assigned to the Bank, certain of its rights under the 2010 Lease Agreement, including its right to receive Lease Payments (as defined therein) and its rights to enforce payment of such payments and otherwise to enforce its interests and rights under the 2010 Lease Agreement in the event of default by the City; and

WHEREAS, the 2010 Lease Agreement provided that City could prepay its obligations thereunder prior to the termination date of the 2010 Lease Agreement, and the City's Council has elected to prepay such obligations, and the City has complied with all requirements contained in the 2010 Lease Agreement and related documents in order to accomplish such actions.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein, the parties hereto hereby agree as follows:

**Section 1. Termination of 2010 Documents.** The (i) 2010 Lease Agreement, and (ii) the 2010 Assignment Agreement, are each terminated and each is of no further force or effect.

**Section 2. Counterparts.** This Termination Agreement may be executed, approved and acknowledged in several counterparts, all or any one of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

**Section 3. Applicable Law.** This Termination Agreement shall be governed by and construed in accordance with the laws of the State of California.

**CITY OF NATIONAL CITY**

By: \_\_\_\_\_  
Leslie Deese  
City Manager

**NATIONAL CITY JOINT POWERS  
FINANCING AUTHORITY**

By: \_\_\_\_\_  
Ron Morrison  
Chairman

**BANK OF AMERICA, N.A.,**

By: \_\_\_\_\_  
Authorized Signatory

**A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                    )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

**A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC



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STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC

## **EXHIBIT A**

### **LEGAL DESCRIPTION OF THE 2010 SITE**

The 2010 Site consists of that certain land located in the City of National City, San Diego County, State of California, more fully described as follows, together with all buildings and facilities and other improvements which constitute real property at any time situated thereon:

#### **PARCEL A:**

PARCEL(S) 1 AND 2 OF PARCEL MAP NO. 4027, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AUGUST 21, 1975 AS FILE NO. 75-224074 OF OFFICIAL, RECORDS.

#### **PARCEL B:**

THE WEST 33-1/3 FEET OF LOTS 7 TO 10, INCLUSIVE, IN BLOCK 13 OF THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 348, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

#### **PARCEL C:**

THE WESTERLY 33 1/3 FEET OF THE EASTERLY 66 2/3 FEET OF LOTS 7 TO 10 INCLUSIVE IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

#### **PARCEL D:**

THE EASTERLY 33 1/3 FEET OF LOTS 7, 8, 9 AND 10 OF BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

#### **PARCEL E:**

THE SOUTHERLY 100 FEET OF LOT 11 AND THE SOUTHERLY 100 FEET OF THE WESTERLY EIGHT AND ONE-THIRD FEET OF LOT 12 EN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

#### **PARCEL F:**

LOTS 13 THROUGH 17 IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL G:

LOT 6, THE NORTH 25 PEST OF LOTS 11 AND 12 AND THE EAST 16 2/3 FEET OF SOUTH 100 FEET OF LOT 12, ALL IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL H:

A. PERMANENT EASEMENT AND RIGHT-OF-WAY TO CONSTRUCT, RECONSTRUCT, MAINTAIN, OPERATE AND REPAIR AN UNDERGROUND EMERGENCY GENERATOR FUEL TANK, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF 12TH STREET, LYING NORTHERLY OF BLOCK 13 OF MAP NUMBER 348, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID BLOCK 13, BEING ALSO THE NORTHWESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF SAID PARCEL 1, 75 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID NORTHERLY LINE, SIGHT FEET; THENCE LEAVING SAID NORTHERLY LINE, AT RIGHT ANGLES, NORTH SIX FEET; THENCE WESTERLY, PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 1, EIGHT FEET; THENCE AT RIGHT ANGLES, SOUTH, SIX FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 48 SQUARE FEET.

APN: 560-013-07; 560-013-08; 560-013-02; 560-013-03; 560-013-04; 560-013-05; 560-013-06; 560-013-09

(End of Legal Description)

RECORDING REQUESTED BY:  
City of National City

AFTER RECORDATION RETURN TO:  
Nossaman LLP  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
Attention: Albert R. Reyes, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX PURSUANT TO SECTION 11922 OF THE CALIFORNIA REVENUE AND TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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**GRANT DEED**

(APNs 560-013-02-00, 560-013-03-00, 560-013-04-05, 560-013-05-15,  
560-013-06-00, 560-013-07-00, 560-013-08-00, 560-013-09-00)

FOR VALUABLE CONSIDERATION, receipt and adequacy of which are hereby acknowledged, NATIONAL CITY JOINT POWERS FINANCING AUTHORITY, a Joint Exercise of Powers Agency ("Grantor"), hereby grants to the CITY OF NATIONAL CITY, a city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("Grantee"), all of its right, title, and interest in and to that certain real property located in the County of San Diego, State of California, bearing the legal description attached herewith as Exhibit A and incorporated herein by this reference, together with all buildings, facilities and other improvements, structures and fixtures which are located thereon (collectively, the "Property") and all easements, appurtenances, development rights, mineral rights, water rights, air rights, and other rights and privileges belonging or appertaining to the Property, and all right, title and interest in, to and under adjoining streets, rights of way and access easements.

Dated as of July 5, 2017.



IN WITNESS WHEREOF, Grantor has caused its duly authorized representative to execute this instrument as of the date hereinafter written.

**NATIONAL CITY JOINT POWERS  
FINANCING AUTHORITY**

By: \_\_\_\_\_  
Ron Morrison  
Chairman

## EXHIBIT A

### LEGAL DESCRIPTION OF THE PROPERTY

The real property referred to herein is situated in the State of California, County of San Diego, city of National City and described as follows:

PARCEL A: APN: 560-013-07-00 and 560-013-08-00

PARCEL(S) 1 AND 2 OF PARCEL MAP NO. 4027, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AUGUST 21, 1975 AS FILE NO. 75-224074 OF OFFICIAL, RECORDS.

PARCEL B: APN: 560-013-02-00

THE WEST 33-1/3 FEET OF LOTS 7 TO 10, INCLUSIVE, IN BLOCK 13 OF THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 348, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL C: APN: 560-013-03-00

THE WESTERLY 33 1/3 FEET OF THE EASTERLY 66 2/3 FEET OF LOTS 7 TO 10 INCLUSIVE IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL D: APN: 560-013-04-05

THE EASTERLY 33 1/3 FEET OF LOTS 7, 8, 9 AND 10 OF BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL E: APN: 560-013-05-15

THE SOUTHERLY 100 FEET OF LOT 11 AND THE SOUTHERLY 100 FEET OF THE WESTERLY EIGHT AND ONE-THIRD FEET OF LOT 12 EN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL F: APN: 560-013-06-00

LOTS 13 THROUGH 17 IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL G: APN: 560-013-09-00

LOT 6, THE NORTH 25 FEET OF LOTS 11 AND 12 AND THE EAST 16 2/3 FEET OF SOUTH 100 FEET OF LOT 12, ALL IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL H:

A. PERMANENT EASEMENT AND RIGHT-OF-WAY TO CONSTRUCT, RECONSTRUCT, MAINTAIN, OPERATE AND REPAIR AN UNDERGROUND EMERGENCY GENERATOR FUEL TANK, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF 12TH STREET, LYING NORTHERLY OF BLOCK 13 OF MAP NUMBER 348, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID BLOCK 13, BEING ALSO THE NORTHWESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF SAID PARCEL 1.75 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID NORTHERLY LINE, EIGHT FEET; THENCE LEAVING SAID NORTHERLY LINE, AT RIGHT ANGLES, NORTH SIX FEET; THENCE WESTERLY, PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 1, EIGHT FEET; THENCE AT RIGHT ANGLES, SOUTH, SIX FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 48 SQUARE FEET.

[APN: 560-013-07- 00 ; 560-013-08-00; 560-013-020-00; 560-013-03-00; 560-013-04-00; 560-013-05-00; 560-013-06-00; 560-013-09-00]

**A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.**

STATE OF CALIFORNIA                    )  
  ) ss.  
COUNTY OF                                    )

On \_\_\_\_\_ before me, \_\_\_\_\_, a notary public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(AFFIX NOTARIAL SEAL)

\_\_\_\_\_  
NOTARY PUBLIC



## CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in Real Property conveyed by grant deed dated as of July 5, 2017, by the NATIONAL CITY JOINT POWERS FINANCING AUTHORITY, a Joint Exercise of Powers Agency ("Grantor"), hereby grants to the City of NATIONAL CITY, a city and municipal corporation duly organized and existing under the Constitution and laws of the State of California ("Grantee"), is hereby accepted by the undersigned officer on behalf of the City pursuant to authority conferred by Resolution \_\_\_\_\_, adopted on June 20, 2017, and the City consents to recordation of the Grant Deed by its duly authorized officer.

July 5, 2017.

### CITY OF NATIONAL CITY

By: \_\_\_\_\_  
Leslie Deese  
City Manager

# NATIONAL CITY JOINT POWERS FINANCING AUTHORITY AGENDA STATEMENT

**MEETING DATE:** June 20, 2017

**AGENDA ITEM NO.**

**ITEM TITLE:**

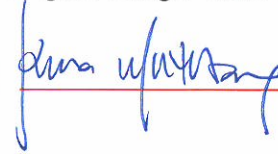
Resolution of the National City Joint Powers Financing Authority relating to the financing of a 2017 Energy Savings Contract, and approving related financing documents and authorizing official actions in connection therewith.

**PREPARED BY:** Jose Lopez, Assistant Engineer - Civil

**DEPARTMENT:** Engineering/Public Works

**PHONE:** 619-336-4312

**APPROVED BY:**



**EXPLANATION:**

See attached.

**FINANCIAL STATEMENT:**

**ACCOUNT NO.** N/A

**APPROVED:** \_\_\_\_\_ **Finance**

**APPROVED:** \_\_\_\_\_ **MIS**

**ENVIRONMENTAL REVIEW:**

N/A

**ORDINANCE:** INTRODUCTION: ☐

**FINAL ADOPTION:** ☐

**STAFF RECOMMENDATION:**

Adopt the resolution of the National City Joint Powers Financing Authority relating to the financing of a 2017 Energy Savings Contract, and approving related financing documents and authorizing official actions in connection therewith.

**BOARD / COMMISSION RECOMMENDATION:**

N/A

**ATTACHMENTS:**

- |                        |                         |
|------------------------|-------------------------|
| 1. Explanation         | 4. Assignment Agreement |
| 2. Facilities Lease    | 5. Resolution           |
| 3. Facilities Sublease |                         |



## Staff Report

June 20, 2017

### ITEM

Resolution of the National City Joint Powers Financing Authority relating to the financing of a 2017 Energy Savings Contract, and approving related financing documents and authorizing official actions in connection therewith

### BACKGROUND

In accordance with the City's Energy Roadmap and Climate Action Plan, Council directed staff on June 3, 2014 to "solicit proposals pursuant to California Government Code 4217, to design, install, and finance sustainability improvements within municipal facilities."

In July 2014, the City's Engineering and Public Works Department advertised a Request for Statement of Qualifications (SOQ) for an energy services contract to make sustainability improvements to City facilities under a guaranteed energy savings contract. Proposals were solicited to provide energy-related capital improvement services through performance-based contracting. These services would include design, installation, maintenance, and monitoring of energy and water saving upgrades at City facilities with a guarantee that monetary savings will cover the cost of the upgrades. The City received two responses which were evaluated by a five member selection committee consisting of city staff, councilmembers and outside consultants. The panel gave Ameresco Inc. the highest overall rating.

Accordingly, City staff and Ameresco negotiated an Energy Audit Agreement (Phase 1). Following execution of the Energy Audit Agreement, Ameresco conducted an Energy Audit of City facilities, developed a project scope of energy and water saving measures, forecasted savings, presented a financing solution, and offered a guarantee that energy cost savings will cover project costs.

The Energy Audit provided the City with the information it needed to evaluate the costs and benefits of proceeding with wide ranging sustainability improvements for municipal facilities in Phase 2 through an Energy Services Agreement (ESA), attached here as Exhibit "A".

After the completion of the Energy Audit, Ameresco presented City staff with several viable project options. Staff evaluated the options and narrowed the options down to two, taking into consideration the best financial performance and priorities for the City. The two most cost effective options were presented to City Council on September 20, 2016, where City Council gave direction to proceed with the staff recommendation of the full program scope of work (Option 2 per PowerPoint presentation presented September 20, 2016). The selected program, Option 2 (the "Project") will include the following Energy Conservation Measures (ECMs), that if implemented, will reduce energy, water, and operational costs at City Facilities listed in Attachment "A" of the ESA.

- ECM 1: Civic Center HVAC & Controls Upgrades
- ECM 4: Solar PV
- ECM 6 HVAC Controls
- ECM 8: Interior Lighting Upgrades
- ECM 9: Exterior Lighting Upgrades
- ECM 10: HVAC Equipment Replacements
- ECM 11: Domestic Water Conservation
- ECM 12: Irrigation Controls

Through negotiations and various revisions between the City and Ameresco, while maintaining the same scope and intent, the total estimated implementation cost was decreased from \$6,608,598 to \$5,402,602, which includes direct costs, energy audit, legal review, project management, engineering, measurement and verification, training, overhead and profit.

In March of 2017, the City submitted an application to the IRS to obtain tax credit financing through the Clean and Renewable Energy Bond (“CREB”) program for a portion of the project that was eligible. On April 17, 2017, the City received approval from the IRS to issue up to \$1,800,000 in CREBS within the next six months.

The City anticipates awarding the construction contract to Ameresco at the June 20<sup>th</sup> City Council meeting. In order to enter into the agreement with Ameresco, the City will require either sufficient funds or approval of a financing plan during the same meeting.

The City anticipates financing the full project and using the projected utility savings as an offset to the debt service on the financing. Based on Ameresco’s Project energy cash flow savings analysis, it is projected to generate average annual cash flow savings of \$30,000 and over \$600,000 in the first 20 years.

## **DISCUSSION**

City staff has been working with Ameresco, NHA Advisors (the City’s Municipal Advisor) and Nossaman LLP (the City’s Bond Counsel) to analyze and evaluate the project costs, secure the CREB allocation, review estimated energy savings, policy considerations, and ultimately develop the lowest cost plan of finance to fund the Project.

The proposed financing plan includes two components. Based on the CREB allocation from the IRS for \$1,800,000 related to the renewable energy (solar) portion of the Project, the balance of the Project costs (approximately \$3,640,000) will be financed through a traditional tax-exempt lease. Both the CREB and tax-exempt lease will be financed through a master lease agreement with Bank of America (based on bids received in late May).

The CREB portion of the Project financing (\$1,800,000) will have an interest rate of 4.83%. The City will submit semi-annual tax forms to the Internal Revenue Service for a “rebate” of a portion of the interest paid. It is anticipated that the tax credit will bring the effective interest rate of the CREB portion down to approximately 1.74%.

The tax-exempt portion of the Project financing (\$3,728,602) will have an interest rate of 2.77% and be paid over 20 years.



The Project financing will be issued through the City's Joint Power Financing Authority (the "Authority") and will be structured as a general fund obligation subject to typical lease provisions including the incorporation of a leased asset. For purposes of the proposed financing, the City's Police Facility is anticipated to be identified as the "leased asset" given its value, high essentiality and appropriate age. The City currently has a lease encumbering the Police Facility with Bank of America that will require the final payment on July 5, 2017 (the final payment is currently due October 1, 2017) in order to release the Police Facility from the old financing and make it available for this Project.

## **PROPOSED LENDER AND TERMS**

NHA Advisors worked with Hilltop Securities (serving as the City's "Placement Agent") to solicit bids from several banks. They received three proposals with the lowest rates from Bank of America. Their proposal included interest rates of 2.77% for the tax-exempt portion (2037 maturity; 11.8 year average life), and 4.83% for the CREB portion (2037 maturity; 14 year average life). As stated above, the all-in effective rate for the CREB (after rebate) will be approximately 1.74%.

## **FINANCING TEAM**

NHA Advisors is serving as the City's Municipal Advisor, Nossaman LLP is serving as Bond Counsel, Hilltop Securities is serving as the Placement Agent, Bank of America will be the purchaser of the Project Financing and Stewart Title will act as the title company for recordation of the lease.

## **TIMING**

Assuming approval of the 2017 financing and contract award to Ameresco on June 20<sup>th</sup>, City staff and its financing team will work to finalize documents with the Bank of America and execute delivery of the Project funds by July 6<sup>th</sup> 2017

## **FISCAL IMPACT**

Based on the terms submitted by Bank of America, the all-in effective borrowing rate for the financing is approximately 2.48% for a 20-year financing. Based on the Ameresco Project proforma, energy savings are expected to average \$30,000 annually through 2037. Additionally, the Project is anticipated to continue benefiting the City through the useful life of the improvements.

## **RECOMMENDATIONS**

Accept staff's recommendation adopting the Resolution of the National City Joint Powers Financing Authority relating to the financing of a 2017 Energy Savings Contract, and approving related financing documents and authorizing official actions in connection therewith.

## **ATTACHMENTS**

1. City Resolution
2. Facilities Lease
3. Facilities Sublease
4. Assignment Agreement

TO BE RECORDED AND WHEN  
RECORDED RETURN TO:

Nossaman LLP  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
Attention: Albert R. Reyes, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX  
PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE.  
THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF  
THE CALIFORNIA GOVERNMENT CODE.

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FACILITIES LEASE

by and between the

CITY OF NATIONAL CITY

and

NATIONAL CITY JOINT POWERS FINANCING AUTHORITY

Dated as of July 1, 2017

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## **FACILITIES LEASE**

**THIS FACILITIES LEASE** (this “Facilities Lease”), executed and entered into as of July 1, 2017, is by and between the CITY OF NATIONAL CITY, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of California and a political subdivision of the State (the “City”), as lessor, and the NATIONAL CITY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California, as lessor (the “Authority”), as lessee.

### **WITNESSETH:**

**WHEREAS**, the City, located in the County of San Diego, California is a political subdivision of the State;

**WHEREAS**, the Authority is a joint powers authority duly organized and existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”), and is authorized pursuant to Article 4 of the Act to borrow money to provide financing and refinancing for public capital improvements of the City;

**WHEREAS**, the City desires to implement an energy efficiency and renewable energy program across multiple sites (the “Project”);

**WHEREAS**, the City has received allocation of authority to issue new clean renewable energy bonds under Section 54C(a) of the Internal Revenue Code from the Internal Revenue Service to finance certain qualified renewable energy facilities related to the Project desires to designate a portion of the lease payments due under the Facilities Sublease a “new clean renewable energy bond” for purposes of Section 54C(a) (“CREB”);

**WHEREAS**, the City intends to lease to the Authority and the Authority intends to hire from the City certain real property owned by the City and the improvements thereto consisting of the City’s police facility located at 1200 National City Boulevard, National City, California (the “Property”) as further described in Exhibit A hereto;

**WHEREAS**, the City is the owner in fee of the Property and has sufficient right, title and interest to lease the Property to the Authority hereunder;

**WHEREAS**, under a Facilities Sublease, dated as of July 1, 2017, and recorded concurrently herewith (the “Facilities Sublease”), from the Authority to the City, the City will be obligated to make Base Rental Payments for the lease of the Property;

**WHEREAS**, the City will make two series of Base Rental Payments (defined herein), designated the “Series A Tax-Exempt Base Rental Payments” (being the tax-exempt portion of the Base Rental Payments related to financing the Project) and the “Series B Taxable Base Rental Payments” (being the taxable portion of the Base Rental Payments related to the CREB) and additional rental payments for the use and occupancy of the Property on the terms and conditions contained in the Facilities Sublease;

**WHEREAS**, all rights to receive (a) the Series A Tax-Exempt Base Rental Payments and a pro-rata portion of certain other rights under this Facilities Lease and the Facilities Sublease will be assigned without recourse by the Corporation to Banc of America Public Capital Corp (together with its successors

and assigns, the "Series A Assignee") pursuant to an Assignment Agreement, dated as of July 1, 2017 among the Authority and the Assignees and recorded concurrently herewith (the "Assignment Agreement") and (b) the Series B Taxable Base Rental Payments and a pro-rata portion of certain other rights under this Facilities Lease and the Facilities Sublease will be assigned without recourse by the Corporation to Banc of America Leasing & Capital, LLC (together with its successors and assigns, the "Series B Assignee") pursuant to the Assignment Agreement;

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Facilities Lease;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Except as otherwise defined herein, or unless the context clearly otherwise requires, words and phrases defined in Article I of the Facilities Sublease shall have the same meanings in this Facilities Lease.

## **ARTICLE II**

### **LEASE OF THE PROPERTY; RENTAL**

**Section 2.01 Lease of Property.** The City hereby leases to the Authority and the Authority hereby leases from the City, the Property, subject only to Permitted Encumbrances, to have and to hold for the term of this Facilities Lease.

**Section 2.02 Rental; Application.** The Authority shall pay to the City as and for rental of the Property hereunder, an amount equal to \$\_\_\_\_\_ (the "Facilities Lease Payment"). The Facilities Lease Payment shall be paid from the proceeds of the sale, assignment and transfer to (a) the Series A Assignee, the Series A Tax-Exempt Base Rental Payments and a respective pro-rata portion of the Authority's right, title and interest in and to this Facilities Lease and the Facilities Sublease pursuant to the Assignment Agreement and (b) the Series B Assignee, the Series B Taxable Base Rental Payments and a respective pro-rata portion of the Authority's right, title and interest in and to this Facilities Lease and the Facilities Sublease pursuant to the Assignment Agreement.

Upon receipt thereof, the Authority shall apply, or cause to be applied, the amount received from the Assignees pursuant to the Assignment Agreement to the payment of the Facilities Lease Payment under the Facilities Lease. Upon receipt thereof, the City shall apply (a) \$\_\_\_\_\_ to the tax-exempt portion of the Project, (b) \$\_\_\_\_\_ to the CREB and (c) \$\_\_\_\_\_ to Related Project Costs.

The Authority and the City hereby find and determine that the amount of the Facilities Lease Payment does not exceed the fair market value of the leasehold interest in the Property which is conveyed hereunder by the City to the Authority. No other amounts of rental shall be due and payable by the Authority for the use and occupancy of the Property under this Facilities Lease.

**Section 2.03    Substitution or Release of Property.** If the City, under Section 6.05 or Section 8.04 of the Facilities Sublease, substitutes or releases property for the Property in whole or in part, such substitution or release shall also automatically operate to substitute or release property for the Property leased hereunder. The description of the property leased under the Facilities Sublease shall conform at all times to the description of the property leased hereunder.

### **ARTICLE III**

#### **QUIET ENJOYMENT**

Subject to any rights the City may have under the Facilities Sublease (in the absence of an event of default) to possession and enjoyment of the Property, the City hereby covenants and agrees that it will not take any action to prevent the Authority from having quiet and peaceable possession and enjoyment of the Property during the term hereof and will, at the request of the Authority and at the City's cost, to the extent that it may lawfully do so, join in any legal action in which the Authority asserts its right to such possession and enjoyment.

### **ARTICLE IV**

#### **ENVIRONMENTAL LAW AND REGULATIONS AND COMPLIANCE**

**Section 4.01    Environmental Law and Regulations.**

(a)    Definitions used in this Section 4.01 and in Section 4.02.

"Asbestos Containing Materials" shall mean material in friable form containing more than one percent (1%) of the asbestiform varieties of (a) chrysotile (serpentine); (b) crocidolite (ricbeckite); (c) amosite (cummington-itegrinerite); (d) anthophyllite; (e) tremolite; and (f) antinolite.

"Asbestos Operations and Maintenance Plan" shall mean that written plan for the Property relating to monitoring and maintaining all Asbestos Containing Materials used or located on the Property.

"Environmental Regulations" shall mean all Laws and Regulations, now or hereafter in effect, with respect to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, et seq.) (together with the regulations promulgated thereunder, "CERCLA"), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) (together with the regulations promulgated thereunder, "RCRA"), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, et seq.) (together with the regulations promulgated thereunder, "Title III"), the Clean Water Act, as amended (33 U.S.C. Section 1251, et seq.) (together with the regulations promulgated thereunder, "CWA"), the Asbestos Hazard Emergency Response Act ("AHERA"), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) (together with the regulations promulgated thereunder, "CAA"), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.) (together with the regulations promulgated thereunder, "TSCA"), the Occupational Safety and Health Act, as amended (29 U.S.C. Section 651 et seq.) (together with regulations promulgated thereunder, "OSHA") and any similar federal, state or local laws and regulations and any so-called local, state or federal "superfund" or "superlien" law.

"Hazardous Materials" shall mean flammable explosives, polychlorinated biphenyl compounds, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, asbestos or any Asbestos Containing Materials, methane, radioactive materials, pollutants, hazardous materials, hazardous wastes,

hazardous, toxic, or regulated substances or related materials, as characterized, regulated or defined in CERCLA, RCRA, CWA, CAA, TSCA, OSHA and Title III, and the regulations promulgated pursuant thereto, and in any other Environmental Regulations applicable to the City, any of the Property or the business operations conducted by the City therein.

“Laws and Regulations” shall mean any applicable law, regulation, code, order, rule, judgment or consent agreement, including, without limitation, those relating to zoning, building, use and occupancy, fire safety, health, sanitation, air pollution, ecological matters, environmental protection, hazardous or toxic materials, substances or wastes, conservation, parking, architectural barriers to the handicapped, or restrictive covenants or other agreements affecting title to the Property. For the avoidance of doubt, “Laws and Regulations” includes all “Laws and Regulations” as defined in the Facilities Sublease.

(b) No portion of the Property is located in an area of high potential incidence of radon.

(c) The City has not received any notice from any insurance company which has issued a policy with respect to the Property or from the applicable state or local government agency responsible for insurance standards (or any other body exercising similar functions) requiring the performance of any repairs, alterations or other work, which repairs, alterations or other work have not been completed at the Property. The City has not received any notice of default or breach which has not been cured under any covenant, condition, restriction, right-of-way, reciprocal easement agreement or other easement affecting the Property which is to be performed or complied with by it.

#### **Section 4.02 Environmental Compliance.**

(a) Neither the City nor the Authority shall use or permit the Property or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the Property and then, only in compliance with all Environmental Regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the pumping, spilling, leaking, disposing of, emptying, discharging or releasing (hereinafter collectively referred to as “Release”) or threat of Release of Hazardous Materials on, from or beneath the Property or onto any other real property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of an office building, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any Release or threat of Release, or presence, of Hazardous Materials, the City shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to the Assignees or the Authority, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so Released or present, on, from or beneath the Property, in compliance with all Environmental Regulations.

(b) The City and the Authority shall comply with, and shall cause its tenants, subtenants, licensees, guests, invitees, contractors, employees and agents to comply with, all Environmental Regulations, and shall keep the Property free and clear of any liens imposed pursuant thereto (provided, however, that any such liens, if not discharged, may be bonded). The City and the Authority shall cause each tenant, and use its best efforts to cause all of such tenant’s subtenants, agents, licensees, employees, contractors, guests and invitees and the guests and invitees of all of the foregoing to comply with all Environmental Regulations with respect to the

Property; provided, however, that notwithstanding that a portion of this covenant is limited to the City and the Authority's use of its best efforts, the Authority and the City shall remain solely responsible for ensuring such compliance and such limitation shall not diminish or affect in any way the City and the Authority's obligations contained in subsection (c) hereof as provided in subsection (c) hereof. Upon receipt of any notice from any individual or Person with regard to the presence of, or Release of Hazardous Materials on, from or beneath the Property, the City and the Authority shall give prompt written notice thereof to the Assignees (and, in any event, prior to the expiration of any period in which to respond to such notice under any Environmental Regulation).

(c) Irrespective of whether any representation or warranty contained in Section 4.01 is not true or correct, the City and the Authority shall, to the extent permitted by law, defend, indemnify and hold harmless the Assignees, and its employees, agents, officers, directors, trustees, successors and assigns, from and against any claims, demands, penalties, fines, attorneys' fees (including, without limitation, attorneys' fees incurred to enforce the indemnification contained in this Section 4.02), consultants' fees, investigation and laboratory fees, liabilities, settlements (five (5) Business Days' prior notice of which the Authority or the Assignees, as appropriate, shall have delivered to the City and the Authority), court costs, damages, losses, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, occurring in whole or in part, arising out of, or in any way related to, (i) the presence, disposal, Release, threat of Release, removal, discharge, storage or transportation of any Hazardous Materials on, from or beneath the Property, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached (five (5) Business Days' prior notice of which the Authority or the Assignees, as appropriate, shall have delivered to the City and the Authority), or governmental order relating to Hazardous Materials on, from or beneath any of the Property, (iv) any violation of Environmental Regulations or subsection (a) or (b) hereof by it or any of its agents, tenants, employees, contractors, licensees, guests, subtenants or invitees, and (v) the imposition of any governmental lien for the recovery of environmental cleanup or removal costs. To the extent that the Authority or the City is strictly liable under any Environmental Regulation, its obligation to the Assignees and the other indemnitees under the foregoing indemnification shall likewise be without regard to fault on its part with respect to the violation of any Environmental Regulation which results in liability to any indemnitee. Its obligations and liabilities under this Section 4.02(c) shall survive any termination of this Facilities Lease and the Facilities Sublease or exercise of any remedies hereunder and thereunder, and the satisfaction of all obligations hereunder and thereunder.

(d) The City and the Authority shall specifically comply with all requirements regarding lead paint and Asbestos Containing Materials, including the Asbestos Hazard Emergency Response Act (referred to as "AHERA" and constituting an Environmental Regulations), and shall inspect the Property and develop, maintain, update and keep copies of relevant management plans at the Property in accordance with all Environmental Regulations. The City shall also maintain all Asbestos Containing Materials and lead paint in an undamaged state and perform any demolition, renovation or other activities in accordance with all Environmental Regulations.



## ARTICLE V

### SPECIAL COVENANTS AND REPRESENTATIONS

**Section 5.01 Waste.** The Authority agrees that at all times that it is in possession of the Property, it will not commit, suffer or permit any waste on the Property, and that it will not willfully or knowingly use or permit the use of the Property for any illegal purpose or act.

**Section 5.02 Further Assurances and Corrective Instruments.** The City and the Authority agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property hereby leased or intended so to be or for carrying out the expressed intention of this Facilities Lease and the Facilities Sublease.

**Section 5.03 Waiver of Personal Liability.** All liabilities under this Facilities Lease on the part of the Authority shall be solely liabilities of the Authority as a joint powers authority, and the City hereby releases each and every director, officer and employee of the Authority of and from any personal or individual liability under this Facilities Lease. No director, officer or employee of the Authority shall at any time or under any circumstances be individually or personally liable under this Facilities Lease to the City or to any other party whomsoever for anything done or omitted to be done by the Authority hereunder.

All liabilities under this Facilities Lease on the part of the City shall be solely liabilities of the City as a general law city, and the Authority hereby releases each and every member, officer and employee of the City of and from any personal or individual liability under this Facilities Lease. No member, officer or employee of the City shall at any time or under any circumstances be individually or personally liable under this Facilities Lease to the Authority or to any other party whomsoever for anything done or omitted to be done by the City hereunder.

**Section 5.04 Taxes.** The City covenants and agrees to pay any and all assessments of any kind or character and also all taxes, including possessory interest taxes, levied or assessed upon the Property.

**Section 5.05 Right of Entry.** The City reserves the right for any of its duly authorized representatives to enter upon the Property at any reasonable time to inspect the same.

**Section 5.06 Representations of the City.** The City represents and warrants to the Authority and the Assignees as follows:

- (a) the City is the owner in fee of the Property;
- (b) the City has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution of this Facilities Lease;
- (c) the Property is not subject to any dedication, easement, right of way, reservation in patent, covenant, condition, restriction, lien or encumbrance which would prohibit or materially interfere with the use of the Property as contemplated by the City;
- (d) all taxes, assessments or impositions of any kind with respect to the Property, except current taxes, have been paid in full;

(e) the Property is necessary to the City in order for the City to perform its governmental function relating to public safety; and the City is in full compliance with all applicable Environmental Regulations and the Asbestos Operations and Maintenance Plan and to the best of the City's knowledge, no Hazardous Substances exist on the Property.

**Section 5.07 Representations of the Authority.** The Authority represents and warrants to the City and the Assignees that the Authority has the full power and authority to enter into, to execute and to deliver this Facilities Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Facilities Lease.

**Section 5.08 Eminent Domain.** If the whole or any part of the Property, or any improvements thereon, are taken by eminent domain proceedings, the interest of the Authority will be 102% of the aggregate amount of the then unpaid principal components of all of the Base Rental Payments and any Additional Payments payable under the Facilities Sublease and the balance of the award, if any, will be paid to the City. The City hereby waives any and all rights that it has or may hereafter have to acquire the interest of the Authority in and to the Property through the eminent domain powers of the City. The City hereby agrees, to the extent permitted by law, that the compensation to be paid in any condemnation proceedings brought by or on behalf of the City with respect to the Property or any improvement thereon shall be in an amount not less than the 100% of the total unpaid principal component of all of the Base Rental Payments plus the interest component of Base Rental Payments accrued to the date of payment of all Base Rental Payments under the Facilities Sublease plus any Additional Payments.

## ARTICLE VI

### ASSIGNMENT, SELLING AND SUBLEASING

**Section 6.01 Assignment, Selling and Subleasing.** This Facilities Lease may be assigned or sold, and the Property may be subleased, as a whole or in part, by the Authority, without the necessity of obtaining the consent of the City, if an event of default occurs under the Facilities Sublease. The Authority shall, within 30 days after such an assignment, sale or sublease, furnish or cause to be furnished to the City a true and correct copy of such assignment, sublease or sale, as the case may be.

The City understands and agrees that, upon the execution and delivery of the Assignment Agreement (which is occurring simultaneously with the execution and delivery hereof), all right, title and interest of the Authority in and to this Facilities Lease will be sold, assigned and transferred to the Assignees. The City hereby consents to such sale, assignment and transfer. Upon the execution and delivery of the Assignment Agreement, references in the provisions hereof to the Authority shall be deemed to be references to the Assignees, as assignees of the Authority, provided however, that the obligations of the Authority are not assigned to Assignees. All rights and remedies of the Authority under this Facilities Lease and the Facilities Sublease shall be exercised by the Lease Servicer identified under the Assignment Agreement as directed by the Assignees pursuant to the Assignment Agreement.

**Section 6.02 Restrictions on the City.** The City agrees that, except with respect to Permitted Encumbrances, it will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property during the term of this Facilities Lease.

## ARTICLE VII

### IMPROVEMENTS

Subject to the terms and provisions of the Facilities Sublease, including Article VI thereof, title to all improvements made on the Property during the term hereof shall vest in the City.

## ARTICLE VIII

### TERM; TERMINATION

**Section 8.01 Term.** The term of this Facilities Lease shall commence as of the date of commencement of the term of the Facilities Sublease and shall remain in full force and effect from such date to and including June 1, 2037, unless such term is extended or sooner terminated as hereinafter provided.

**Section 8.02 Extension; Early Termination.** If, on June 1, 2037, the Rental Payments shall remain due and payable or shall have been abated at any time and for any reason, and notwithstanding any exercise of remedies by the Authority under the terms of the Facilities Sublease, including termination of the Facilities Sublease, then the term of this Facilities Lease shall be automatically extended until the date upon which all Rental Payments shall have been paid in full, or provision therefor shall have been made in accordance with the terms of the Facilities Sublease, except that the term of this Facilities Lease shall in no event be extended more than ten years. If prior to June 1, 2037, or prior to the date to which the term of this Facilities Lease has been extended pursuant to this Section, all Rental Payments shall have been paid in full, or provision therefor shall have been made in accordance with the terms of the Facilities Sublease, the term of this Facilities Lease shall end simultaneously therewith.

**Section 8.03 Action on Default.** In each and every case upon the occurrence and during the continuance of a default by the Authority hereunder, the City shall have all the rights and remedies permitted by law, except that no merger of this Facilities Lease and the Facilities Sublease shall be deemed to occur as a result thereof, and the City, to the extent permitted by law, waives any and all rights to terminate this Facilities Lease.

## ARTICLE IX

### MISCELLANEOUS

**Section 9.01 Binding Effect.** This Facilities Lease shall inure to the benefit of and shall be binding upon the City, the Authority and their respective successors and assigns. The Lease Servicer and the Assignees are third-party beneficiaries of this Facilities Lease.

**Section 9.02 Severability.** In the event any provision of this Facilities Lease shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 9.03 Amendments; Substitution and Release.** This Facilities Lease may be amended, changed, modified, altered or terminated only in accordance with the provisions of the Facilities Sublease. The City shall have the right to substitute alternate real property for the Property or to release portions of the Property as provided in the Facilities Sublease.



**Section 9.04    Execution in Counterparts.** This Facilities Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.05    Applicable Law.** This Facilities Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

**Section 9.06    Captions.** The captions or headings in this Facilities Lease are for convenience only and in no way define or limit the scope or intent of any provision of this Facilities Lease.

**IN WITNESS WHEREOF**, the parties hereto have caused this Facilities Lease to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**CITY OF NATIONAL CITY**

By: \_\_\_\_\_  
City Manager

**NATIONAL CITY JOINT POWERS FINANCING  
AUTHORITY**

By: \_\_\_\_\_  
Chairman

**EXHIBIT A**

**DESCRIPTION OF THE PROPERTY**

Real property in the State of California, County of San Diego Unincorporated and described as follows:

PARCEL A: (APN: 560-013-07-00 and 560-013-08-00

PARCEL(S) 1 AND 2 OF PARCEL MAP NO. 4027, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AUGUST 21, 1975 AS FILE NO. 75-224074 OF OFFICIAL, RECORDS.

PARCEL B: APN: 560-013-02-00

THE WEST 33-1/3 FEET OF LOTS 7 TO 10, INCLUSIVE, IN BLOCK 13 OF THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 348, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL C: APN: 560-013-03-00

THE WESTERLY 33 1/3 FEET OF THE EASTERLY 66 2/3 FEET OF LOTS 7 TO 10 INCLUSIVE IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL D: APN: 560-013-04-05

THE EASTERLY 33 1/3 FEET OF LOTS 7, 8, 9 AND 10 OF BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL E: APN: 560-013-05-15

THE SOUTHERLY 100 FEET OF LOT 11 AND THE SOUTHERLY 100 FEET OF THE WESTERLY EIGHT AND ONE-THIRD FEET OF LOT 12 EN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL F: APN: 560-013-06-00

LOTS 13 THROUGH 17 IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL G: APN: 560-013-09-00

LOT 6, THE NORTH 25 FEET OF LOTS 11 AND 12 AND THE EAST 16 2/3 FEET OF SOUTH 100 FEET OF LOT 12, ALL IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL H:

A. PERMANENT EASEMENT AND RIGHT-OF-WAY TO CONSTRUCT, RECONSTRUCT, MAINTAIN, OPERATE AND REPAIR AN UNDERGROUND EMERGENCY GENERATOR FUEL TANK, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF 12TH STREET, LYING NORTHERLY OF BLOCK 13 OF MAP NUMBER 348, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID BLOCK 13, BEING ALSO THE NORTHWESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF SAID PARCEL 1.75 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID NORTHERLY LINE, EIGHT FEET; THENCE LEAVING SAID NORTHERLY LINE, AT RIGHT ANGLES, NORTH SIX FEET; THENCE WESTERLY, PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 1, EIGHT FEET; THENCE AT RIGHT ANGLES, SOUTH, SIX FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 48 SQUARE FEET.

APN: 560-013-07-00; 560-013-08-00; 560-013-020-00; 560-013-03-00; 560-013-04-00;  
560-013-05-00; 560-013-06-00; 560-013-09-00

(End of Legal Description)

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

## **CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the real property conveyed by the foregoing FACILITIES LEASE, dated July 1, 2017 (the "Facilities Lease"), from the CITY OF NATIONAL CITY to the NATIONAL CITY JOINT POWERS FINANCING AUTHORITY (the "Authority"), a joint powers authority, is hereby accepted by the undersigned officer on behalf of the Commission of the Authority (the "Commission") pursuant to authority conferred by resolution of the Commission adopted on June 20, 2017, and the Authority, as grantee, consents to recordation thereof by its duly authorized officer.

I have executed this Certificate of Acceptance on July 6, 2017.

**NATIONAL CITY JOINT POWERS  
FINANCING AUTHORITY**

By: \_\_\_\_\_

TO BE RECORDED AND WHEN  
RECORDED RETURN TO:

Nossaman LLP  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
Attention: Albert R. Reyes, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER TAX  
PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND TAXATION CODE.  
THIS DOCUMENT IS EXEMPT FROM RECORDING FEES PURSUANT TO SECTION 27383 OF  
THE CALIFORNIA GOVERNMENT CODE.

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FACILITIES SUBLEASE

by and between

NATIONAL CITY JOINT POWERS FINANCING AUTHORITY

and

CITY OF NATIONAL CITY

Dated as of July 1, 2017

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## **FACILITIES SUBLEASE**

**THIS FACILITIES SUBLEASE** (this “Facilities Sublease”), executed and entered into and dated as of July 1, 2017, is by and between the CITY OF NATIONAL CITY, a municipal corporation duly organized and validly existing under the Constitution and laws of the State of California and a political subdivision of the State (the “City”), as lessee, and the NATIONAL CITY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California, as lessor (the “Authority”), as lessor.

### **WITNESSETH:**

**WHEREAS**, the City, located in the County of San Diego, California is a political subdivision of the State;

**WHEREAS**, the Authority is a joint powers authority duly organized and existing under the provisions of Articles 1 through 4 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (the “Act”), and is authorized pursuant to Article 4 of the Act to borrow money to provide financing and refinancing for public capital improvements of the City;

**WHEREAS**, the City desires to implement an energy efficiency and renewable energy program across multiple sites (the “Project”);

**WHEREAS**, in order to finance the Project, the City will lease certain real property owned by the City and the improvements thereto consisting of the City’s police facility located at 1200 National City Boulevard, National City, California (the “Property”) to the Authority pursuant to a Facilities Lease, dated as of the date hereof (the “Facilities Lease”) and the City will sublease the Property back from the Authority pursuant to this Facilities Sublease;

**WHEREAS**, the City has received allocation of authority to issue new clean renewable energy bonds under Section 54C(a) of the Internal Revenue Code from the Internal Revenue Service to finance certain qualified renewable energy facilities related to the Project desires to designate a portion of the lease payments due under this Facilities Sublease a “new clean renewable energy bond” (“CREB”) for purposes of Section 54C(a);

**WHEREAS**, the City will make two series of Base Rental Payments (defined herein), designated the “Series A Tax-Exempt Base Rental Payments” (being the tax-exempt portion of the Base Rental Payments related to financing the Project) and the “Series B Taxable Base Rental Payments” (being the taxable portion of the Base Rental Payments related to the CREB and additional rental payments for the use and occupancy of the Property on the terms and conditions contained in this Facilities Sublease;

**WHEREAS**, the Property is more particularly described in Exhibit A hereto; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Facilities Lease do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Facilities Lease.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01. Definitions.** Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Facilities Sublease, have the meanings herein specified, which meanings shall be equally applicable to both the singular and plural forms of any of the terms herein defined.

**“Additional Rental Payments”** means all amounts payable by the City as Additional Rental Payments pursuant to Section 4.02 hereof.

**“Assignees” and “Assignee”** means, respectively, collectively and individually (a) the Series A Assignee, (b) the Series B Assignee and (c) the Series C Assignee). and assigns.

**“Aggregate Rental Payments”** means, as of the date of determination, the sum of (a) the aggregate principal components of unpaid Series A Tax-Exempt Base Rental Payments *plus* (b) the aggregate principal components of unpaid Series B Taxable Base Rental Payments.

**“Assigned Series A Rights”** means all of the Authority’s rights, title and interest in and to the Series A Tax-Exempt Base Rental Payments and the Series A Assignee Pro Rata Percentage of all of the Authority’s right, title and interest in and to the Facilities Lease and the Facilities Sublease.

**“Assigned Series B Rights”** means all of the Authority’s rights, title and interest in and to the Series B Taxable Base Rental Payments and the Series B Assignee Pro Rata Percentage of all of the Authority’s right, title and interest in and to the Facilities Lease and the Facilities Sublease.

**“Assignment Agreement”** means the Assignment Agreement, dated as of the date hereof, by and between the Authority and the Assignees, as originally executed and as it may from time to time be amended in accordance with the provisions thereof and hereof.

**“Authority”** means National City Joint Powers Financing Authority, a joint exercise of powers authority, organized and existing under the laws of the State.

**“Authorized Officer”** means the Mayor, City Manager, Deputy City Manager, Director of Finance and any other person authorized by the City Council of the City to act on behalf of the City under or with respect to this Facilities Sublease.

**“Base Rental Payment Dates”** means June 1 and December 1 of each year commencing December 1, 2017.

**“Base Rental Payment Schedules”** means the schedule of Base Rental Payments payable to the Authority from the City pursuant to Section 4.01 hereof and attached hereto as Exhibit B.

**“Base Rental Payments”** means all amounts payable to the Authority from the City as Base Rental Payments pursuant to Section 4.01 hereof. The Base Rental Payments shall include the Series A Tax-Exempt Base Rental Payments related to financing the tax-exempt portion of the Project, set forth in

Exhibit B-1 hereto and the Series B Taxable Base Rental Payments related to the CREB, set forth in Exhibit B-2 hereto.

**“Business Day”** means a day which is not (a) a Saturday, Sunday or legal holiday in the State of California, or (b) a day on which banking institutions in the State of California, or in any state in which the Office of any Assignee is located is required or authorized by law (including executive order) to close.

**“Certificate of the City”** means a written certificate signed by an Authorized Officer.

**“City”** means the City of National City, a municipal corporation organized and existing under the laws of the State.

**“Code”** means the Internal Revenue Code of 1986, as amended.

**“CREB”** means that portion of the Series B Taxable Base Rental Payments designated as “CREB Principal” payable to the Authority by the City pursuant to Section 4.01 hereof and as set forth in Exhibit B-2.

**“Delivery Date”** means July 6, 2017.

**“Environmental Regulations”** means all Laws and Regulations, now or hereafter in effect, with respect to Hazardous Materials, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, et seq.) (together with the regulations promulgated thereunder, “CERCLA”), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.) (together with the regulations promulgated thereunder, “RCRA”), the Emergency Planning and Community Right-to-Know Act, as amended (42 U.S.C. Section 11001, et seq.) (together with the regulations promulgated thereunder, “Title III”), the Clean Water Act, as amended (33 U.S.C. Section 1321, et seq.) (together with the regulations promulgated thereunder, “CWA”), the Asbestos Hazard Emergency Response Act (“AHERA”), the Clean Air Act, as amended (42 U.S.C. Section 7401, et seq.) (together with the regulations promulgated thereunder, “CAA”) and the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601 et seq.) (together with the regulations promulgated thereunder, “TSCA”), the Occupational Safety and Health Act (together with any regulations promulgated thereunder, “OSHA”), as amended (29 U.S.C. Section 651 et seq.) and any state or local similar Laws and Regulations and any so-called local, state or federal “superfund” or “superlien” law.

**“Event of Default”** means one or more of the events described in Section 9.01 hereof.

**“Expenditure Period”** means the “expenditure period” defined in Section 54A(d)(2)(B)(ii) of the Code and consists of the period beginning on the date of issue and ending on the later of the date 3 years after the date of issue or such later date, if any, as permitted by the Internal Revenue Service in response to a request to extend the Expenditure Period.

**“Extended Lease Term”** means a period (and any successive period) during which the original term of this Facilities Sublease is extended pursuant to abatement as provided herein and is equal in duration to any period during which the City does not pay Rental Payments (in whole or in part) when scheduled as a result of the occurrence of an event that results in abatement of the City’s obligation to make Rental Payments in accordance with the payment schedule attached hereto.

**“Facilities Lease”** means the Facilities Lease, dated as of the date hereof, by and between the City and the Authority, as originally executed and as it may from time to time be amended in accordance with the provisions thereof and hereof.

**“Facilities Lease Payment”** has the meaning ascribed to such term in the Facilities Lease.

**“Facilities Sublease”** means this Facilities Sublease, as the same may be amended or supplemented pursuant to the provisions hereof.

**“Fair Rental Value”** means, with respect to the Property, the annual fair rental value thereof.

**“Governmental Authority”** means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, district or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

**“Hazardous Materials”** means flammable explosives, polychlorinated biphenyl compounds, heavy metals, chlorinated solvents, cyanide, radon, petroleum products, asbestos, any Asbestos Containing Materials (as defined in the Facilities Lease), methane, radioactive materials, pollutants, hazardous materials, hazardous wastes, hazardous, toxic, or regulated substances or related materials, all as characterized, regulated or defined in CERCLA, RCRA, CWA, CAA, TSCA, OSHA and Title III, and the regulations promulgated pursuant thereto, and in all other Environmental Regulations applicable to the City, any of the Property or the business operations conducted by the City therein.

**“Laws and Regulations”** means federal, regional, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or other Governmental Authority having jurisdiction as may be in effect from time to time. For the avoidance of doubt “Laws and Regulations” includes all “Laws and Regulations” as defined in the Facilities Lease.

**“Net Proceeds”** means any insurance proceeds or condemnation award paid with respect to any of the Property, remaining after payment therefrom of all reasonable expenses incurred in the collection and administration thereof.

**“Opinion of Counsel”** means a written opinion of counsel of recognized national standing in the field of law relating to municipal bonds, appointed and paid by the City.

**“Permitted Encumbrances”** means, with respect to the Property, as of any particular time, (a) liens for general *ad valorem* taxes and assessments, if any, not then delinquent, or which the City may, pursuant to provisions of Section 5.04 hereof, permit to remain unpaid, (b) the Assignment Agreement, (c) this Facilities Sublease, (d) the Facilities Lease, (e) any right or claim of any mechanic, laborer, materialman, supplier or vendor not filed or perfected in the manner prescribed by law as normally would exist with respect to properties similar to the Property for the purposes for which it was acquired or is held by the City, (f) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions which exist of record as of the Delivery Date which the City certifies in writing will not affect the intended use of the Property and will not interfere with the City’s beneficial use and enjoyment of the Property or result in any abatement of Rental Payments under this Facilities Sublease and to which the Authority consents in writing, and (g) easements, rights of way, mineral rights, drilling rights and other rights, reservations, covenants, conditions or restrictions established following the Delivery Date which the City certifies in writing do not affect the intended use of the Property and will not interfere with the City’s beneficial use and enjoyment of the Property or result in any abatement of Rental Payments under this Facilities Sublease and to which the Authority consents in writing.



**“Property”** means the real property described in Exhibit A hereto and any improvements thereto. From and after the date of any substitution or release of property pursuant to the terms hereof, the term **“Property”** means the real property which remains subject to this Facilities Sublease following such substitution or release.

**“Related Project Costs”** means all the costs of executing and delivering the Facilities Lease, the Facilities Sublease, the Assignment Agreement and the related documents and instruments, including, but not limited to, printing expenses, filing and recording fees, fees, charges and disbursements of attorneys, financial advisors, accounting firms, consultants and other professionals, and any other cost, charge or fee in connection with the original execution and delivery of the Facilities Lease, the Facilities Sublease, the Assignment Agreement and the related documents and instruments or the implementation of the financing contemplated thereby.

**“Rental Payments”** means, collectively, the Base Rental Payments and the Additional Rental Payments.

**“Rental Period”** means the period from the Delivery Date through [August 31, 2017], and, thereafter, the twelve-month period commencing on [September 1] of each year during the term of this Facilities Sublease.

**“Series A Assignee”** means (a) initially, Banc of America Public Capital Corp, a Kansas corporation, and its successors and assigns, as assignee of the Assigned Series A Rights pursuant to the Assignment Agreement, and (b) any other entity to whom the Assigned Series A Rights (or any interest therein) are assigned and transferred as provided in Section 10.06 hereof.

**“Series A Assignee Pro Rata Percentage”** means, as of any date of calculation, a fraction, the numerator of which is the unpaid aggregate principal components of Series A Tax-Exempt Base Rental Payments and the denominator of which is the Aggregate Rental Payments, which is expressed as a percentage.

**“Series A Tax-Exempt Base Rental Payments”** means the Base Rental Payments set forth in Exhibit B-1 hereto.

**“Series B Assignee”** means (a) initially, Banc of America Leasing & Capital, LLC, a Delaware limited liability corporation, and its successors and assigns, as assignee of the Assigned Series B Rights pursuant to the Assignment Agreement, and (b) any other entity to whom the Assigned Series B Rights (or any interest therein) are assigned and transferred as provided in Section 10.06 hereof.

**“Series B Assignee Pro Rata Percentage”** means, as of any date of calculation, a fraction, the numerator of which is the unpaid aggregate principal components of Series B Taxable Base Rental Payments and the denominator of which is the Aggregate Rental Payments, which is expressed as a percentage.

**“Series B Taxable Base Rental Payments”** means the Base Rental Payments set forth in Exhibit B-2 hereto.

**“Servicer”** has the meaning set forth in the Assignment Agreement.

**“State”** means the State of California.

**“Tax Certificate”** means the Tax Certificate executed by the City at the time of execution and delivery of the Facilities Sublease, executed and delivered by the City on the Delivery Date, including all exhibits attached thereto, as such certificate may from time to time be modified or supplemented in accordance with the terms thereof.

**“Termination Date”** means June 1, 2037, unless extended or sooner terminated as provided in Section 3.02 and Section 4.06 hereof.

## ARTICLE II

### USE OF PROCEEDS; REPRESENTATIONS AND WARRANTIES

**Section 2.01. Application of Moneys.** The Facilities Lease provides that the Authority is to pay to the City, as and for rental of the Property thereunder, the Facilities Lease Payment in an amount equal to \$\_\_\_\_\_. The Assignment Agreement provides that (a) the Series A Assignee, in consideration of the sale, assignment and transfer to the Assignee of the respective pro-rata portion of the Authority’s right, title and interest in and to the Facilities Lease and this Facilities Sublease, is to pay to the Authority an aggregate amount equal to \$\_\_\_\_\_ and (b) the Series B Assignee, in consideration of the sale, assignment and transfer to the Assignee of the respective pro-rata portion of the Authority’s right, title and interest in and to the Facilities Lease and this Facilities Sublease, is to pay to the Authority an aggregate amount equal to \$\_\_\_\_\_ (the “Series B Proceeds”). Upon receipt thereof, the Authority shall apply, or cause to be applied, the amount received from the Assignees pursuant to the Assignment Agreement to the payment of the Facilities Lease Payment under the Facilities Lease. Upon receipt thereof, the City shall apply (i) \$\_\_\_\_\_ to the tax-exempt portion of the Project, (ii) \$\_\_\_\_\_ to the CREB portion of the Project, (iii) apply \$\_\_\_\_\_ for capitalized interest for the [Series A Tax-Exempt Base Rental Payments][Series B Taxable Base Rental Payments], (iv) apply \$\_\_\_\_\_ to the payment of Related Project Costs relating to the tax-exempt portion of the Project and (v) apply \$\_\_\_\_\_ (which shall not exceed 2% of the Series B Proceeds) to the payment of Related Project Costs relating to the CREB portion of the Project.

**Section 2.02. Representations and Warranties of the City.** The City represents and warrants to the Authority as follows:

(a) The City is a municipal corporation duly organized and existing under the Constitution and laws of the State.

(b) The City has duly authorized and executed this Facilities Sublease and the Facilities Lease in accordance with the Constitution and laws of the State.

(c) The Constitution and laws of the State authorize the City to enter into this Facilities Sublease and the Facilities Lease, and to enter into the transactions contemplated hereby and thereby and to carry out its obligations hereunder and thereunder, the City has duly authorized and executed this Facilities Sublease and the Facilities Lease, and this Facilities Sublease and the Facilities Lease constitute the legal, valid and binding obligations of the City enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(d) Neither the execution and delivery of this Facilities Sublease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in

a breach of the terms, conditions or provisions of any applicable law, restriction or any agreement or instrument to which the City is now a party or by which the City is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the City, which conflict, breach, default, lien, charge or encumbrance would have a material adverse effect on the City's ability to perform its obligations under this Facilities Sublease or the Facilities Lease.

(e) Neither the execution and delivery of this Facilities Sublease or the Facilities Lease, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, results in the creation or imposition of any lien, charge or encumbrance whatsoever upon the Property, except for Permitted Encumbrances.

(f) There are no actions or proceedings against the City pending (service of process having been accomplished) or overtly threatened in writing or otherwise known to the City (i) to restrain or enjoin the payment of the Rental Payments, (ii) in any way contesting the validity of the Facilities Lease or the Facilities Sublease or the authority of the City to enter into the Facilities Lease or the Facilities Sublease, (iii) in any way contesting the powers of the City in connection with any action contemplated by the Facilities Lease or the Facilities Sublease, or (iv) in which a final adverse decision could materially adversely affect the operation of the City or its ability to perform its obligations under the Facilities Lease or the Facilities Sublease.

(g) The Property is essential to the City's efficient and economic operations and the lease thereof for use by the City is in the best interest of the City.

(h) The Property complies in all material respects with applicable zoning, environmental and safety ordinances, and the City does not believe there to be any adverse environmental conditions on the Property.

(i) There has been no material adverse change in the City's financial condition subsequent to June 30, 2016, and the City's financial statements dated as of said date fairly and accurately present the City's financial condition in all material respects.

(j) The City acknowledges that (i) each Assignee is acting solely as assignee of the Authority's right, title and interest in this Facilities Sublease for its own account and not as a fiduciary for the City or in the capacity of broker, dealer, municipal securities underwriter, placement agent, or municipal advisor, (ii) no Assignee has provided, and no Assignee will provide, financial, legal, tax, accounting or other advice to or on behalf of the City with respect to its purchase of the Authority's right, title and interest in this Facilities Sublease, and (iii) the City has sought and obtained financial, legal, tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters) with respect to the financing effectuated through the Facilities Sublease and the Facilities Lease from its financial, legal and other advisors (and not any Assignee) to the extent that the City desired to obtain such advice.

(k) As of the Delivery Date, the insured replacement value of the improvements on portion of the Property relating consisting of real property (excluding land) is \$\_\_\_\_\_.

(l) The exceptions set forth in the title insurance policy issued by Stewart Title Guaranty Company do not affect the intended use of the Property or interfere with the City's beneficial use and enjoyment of the Property. The City owns the Property in fee simple subject only to Permitted Encumbrances.



(m) No consent or approval of any trustee or holder of any indebtedness of the City or of the voters of the City, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery by the City of the Facilities Lease and this Facilities Sublease, or the consummation of any transaction therein or herein contemplated, except as have been obtained or made and as are in full force and effect, or except as would not materially adversely effect the transactions contemplated hereby.

**Section 2.03. Representations and Warranties of the Authority.** The Authority represents and warrants to the City as follows:

(a) The Authority is a joint exercise of powers authority, duly organized and existing under the laws of the State.

(b) The Authority has duly authorized and executed this Facilities Sublease, the Facilities Lease and the Assignment Agreement in accordance with the laws of the State.

(c) The Authority has the power to enter into this Facilities Sublease, the Facilities Lease and the Assignment Agreement, is possessed of full power to own and hold real and personal property, and to lease and sell the same, has duly authorized the execution and delivery of this Facilities Sublease, the Facilities Lease and the Assignment Agreement, and this Facilities Sublease, the Facilities Lease and the Assignment Agreement constitute the legal, valid and binding obligations of the Authority, enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(d) Neither the execution and delivery of this Facilities Sublease, the Facilities Lease or the Assignment Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any applicable law, restriction or any agreement or instrument to which the Authority is now a party or by which the Authority is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Authority, which conflict, breach, default, lien, charge or encumbrance would have a material adverse effect on the Authority's ability to perform its obligations under this Facilities Sublease, the Facilities Lease or the Assignment Agreement.

(e) There are no actions or proceedings against the Authority pending (service of process having been accomplished) or overtly threatened in writing or otherwise known to the Authority (i) to restrain or enjoin the payment of the Rental Payments, (ii) in any way contesting the validity of the Facilities Lease, this Facilities Sublease or the Assignment Agreement or the authority of the Authority to enter into the Facilities Lease, this Facilities Sublease or the Assignment Agreement, (iii) in any way contesting the powers of the Authority in connection with any action contemplated by the Facilities Lease, this Facilities Sublease or the Assignment Agreement, or (iv) in which a final adverse decision could materially adversely affect the operation of the Authority or its ability to perform its obligations under the Facilities Lease, this Facilities Sublease or the Assignment Agreement.

## ARTICLE III

### LEASE OF PROPERTY; TERM

**Section 3.01. Lease of Property.** (a) The Authority hereby leases to the City and the City hereby leases from the Authority the Property, on the terms and conditions hereinafter set forth, subject to all Permitted Encumbrances.

(b) The leasing of the Property by the City to the Authority pursuant to the Facilities Lease shall not effect or result in a merger of the City's leasehold estate in the Property as lessee under this Facilities Sublease and its fee estate in the Property as lessor under the Facilities Lease, and the Authority shall continue to have a leasehold estate in the Property pursuant to the Facilities Lease throughout the term thereof and hereof. This Facilities Sublease shall constitute a sublease with respect to the Property. The leasehold interest in the Property granted by the City to the Authority pursuant to the Facilities Lease is and shall be independent of this Facilities Sublease; this Facilities Sublease shall not be an assignment or surrender of the leasehold interest in the Property granted to the Authority under the Facilities Lease.

**Section 3.02. Term; Occupancy.** (a) The term of this Facilities Sublease shall commence on the Delivery Date and end on the Termination Date, unless such term is extended or sooner terminated as hereinafter provided. If on the Termination Date the Rental Payments shall remain due and payable or shall have been abated at any time and for any reason, then the term of this Facilities Sublease shall, subject to the right of the Authority to exercise its remedies as provided in Section 9.01, be automatically extended until the date upon which all Rental Payments shall have been paid in full, or provision therefor shall have been made in accordance with the terms hereof, except that the term of this Facilities Sublease shall in no event be extended more than ten years beyond the Termination Date. If prior to the Termination Date, or prior to the date to which the term of this Facilities Sublease has been extended pursuant to this Section, all Rental Payments shall have been paid in full, or provision therefor shall have been made in accordance with the terms hereof, the term of this Facilities Sublease shall end simultaneously therewith.

(b) The City shall take possession of the Property on the Delivery Date.

**Section 3.03. Title to Property.** Upon the termination or expiration of this Facilities Sublease (other than as provided in Sections 8.01 and 9.01 hereof), all right, title and interest in and to the Property shall vest in the City. Upon any such termination or expiration, the Authority shall execute such conveyances, deeds and other documents as may be necessary to effect such vesting of record.

## ARTICLE IV

### RENTAL PAYMENTS

**Section 4.01. Base Rental Payments.** (a) *General.* Subject to the provisions hereof relating to a revision of the Base Rental Payment Schedules pursuant to subsection (b) of this Section, the City shall pay to the Authority, as Base Rental Payments (subject to the provisions of Section 4.06 and Article VIII of this Facilities Sublease) the amount at the times specified in the Base Rental Payment Schedules set forth in Exhibit B hereto and made a part hereof, a portion of which Base Rental Payments shall constitute principal components and a portion of which shall constitute interest components. The portion of the principal component of the Series B Taxable Base Rental Payments are hereby designated a "new clean renewable energy bond" for purposes of Section 54C(a) of the Internal Revenue Code (the "CREB"). The interest components of the Base Rental Payments shall be paid by the City as and

constitute interest paid on the principal components of the Base Rental Payments. Except to the extent specified in Section 4.06 hereof, Rental Payments, including Base Rental Payments, shall be paid by the City to the Authority for and in consideration of the right to use and occupy the Property and in consideration of the continued right to the quiet use and enjoyment thereof during each Rental Period for which such Rental Payments are to be paid and such obligation to pay Rental Payments and the City's obligation to observe the other covenants and agreements contained in this Agreement shall be absolute and unconditional in all events without abatement, diminution, deduction, set-off or defense, for any reason, including, without limitation, the failure or inability (for whatever reason) of the City to receive (or delay in receipt of) all or any portion of the direct cash subsidy payment with respect to this Facilities Sublease, the availability to the City of energy or savings from the Project, the nonpayment of any amounts payable by any vendor pursuant to any vendor agreement related to the Project or any other issues with respect to Project.

The obligation of the City to make the Base Rental Payments does not constitute a debt of the City or of the State or of any political subdivision thereof within the meaning of any constitutional or statutory debt limit or restriction, and does not constitute an obligation for which the City or the State is obligated to levy or pledge any form of taxation or for which the City or the State has levied or pledged any form of taxation.

(b) *Payments other than Regularly Scheduled Payments.* If the term of this Facilities Sublease shall have been extended pursuant to Sections 3.02 or 4.06 hereof, the obligation of the City to pay Rental Payments shall continue through the date of termination of this Facilities Sublease (as so extended pursuant to Sections 3.02 or 4.06 hereof). Upon such extension, the principal and interest components of the Base Rental Payments shall be established so that the principal components will in the aggregate be sufficient to pay all extended and unpaid principal components and the interest components will in the aggregate be sufficient to pay all extended and unpaid interest components; provided, however, that the Rental Payments payable in any Rental Period shall not exceed the annual fair rental value of the Property

**Section 4.02. Additional Rental Payments.** The City shall also pay, as Additional Rental Payments, such amounts as shall be required for the payment of the following:

(a) all taxes and assessments of any type or nature charged to the Authority or the City or affecting the Property or the respective interests or estates of the Authority or the City therein;

(b) all reasonable administrative costs of the Authority relating to the Property including, but without limiting the generality of the foregoing, salaries, wages, fees and expenses, fees of auditors, accountants, attorneys or engineers, and all other necessary and reasonable administrative costs of the Authority or charges required to be paid by it in order to maintain its existence or to comply with the terms of this Facilities Sublease or to defend the Authority and its members, directors, officers, agents and employees;

(c) insurance premiums for all insurance required pursuant to Article VII hereof;

(d) any amounts with respect to this Facilities Sublease required to be rebated to the federal government in accordance with section 148(f) of the Code; and

(e) all other payments required to be paid by the City under the provisions of this Facilities Sublease.

Amounts constituting Additional Rental Payments payable hereunder shall be paid by the City directly to the person or persons to whom such amounts shall be payable. The City shall pay all such amounts when due or at such later time as such amounts may be paid without penalty or, in any other case, within 60 days after notice in writing from the Authority to the City stating the amount of Additional Rental Payments then due and payable and the purpose thereof.

**Section 4.03. Fair Rental Value.** The parties hereto have agreed and determined that the Rental Payments are not in excess of the Fair Rental Value of the Property. In making such determination of Fair Rental Value, consideration has been given to the uses and purposes that may be served by the Property and the benefits therefrom which will accrue to the City and the general public. Payments of the Rental Payments for the Property during each Rental Period shall constitute the total rental for said Rental Period.

**Section 4.04. Payment Provisions.** Each installment of Base Rental Payments payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Authority, or such other place or entity as the Authority shall designate. Each Base Rental Payment shall be deposited with the Authority no later than the Base Rental Payment Date on which such Base Rental Payment is due. Any Base Rental Payment which shall not be paid by the City when due and payable under the terms of this Facilities Sublease shall bear interest from the date when the same is due hereunder until the same shall be paid at the rate of 12% per annum. Notwithstanding any dispute between the Authority and the City, the City shall make all Rental Payments when due without deduction or offset of any kind and shall not withhold any Rental Payments pending the final resolution of such dispute. In the event of a determination that the City was not liable for said Rental Payments or any portion thereof, said payments or excess of payments, as the case may be, shall be credited against subsequent Rental Payments due hereunder or refunded at the time of such determination.

**Section 4.05. Appropriations Covenant.** The City covenants to take such action as may be necessary to include all Rental Payments due hereunder in its annual budgets and to make necessary annual appropriations for all such Rental Payments. The covenants on the part of the City herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the City to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the City to carry out and perform the covenants and agreements in this Facilities Sublease agreed to be carried out and performed by the City.

**Section 4.06. Rental Abatement.** Except as otherwise specifically provided in this Section, during any period in which, by reason of material damage to, or destruction or condemnation of, the Property, or any defect in title to the Property, there is substantial interference with the City's use and occupancy of any portion of the Property, Rental Payments shall be abated proportionately (and such portion of Rental Payments to be abated shall be allocated on a pro-rata basis across the Series A Tax-Exempt Base Rental Payments and the Series B Taxable Base Rental Payments), and the City waives the benefits of California Civil Code Sections 1932(1), 1932(2) and 1933(4) and any and all other rights to terminate this Facilities Sublease by virtue of any such interference, and this Facilities Sublease shall continue in full force and effect. The City shall immediately notify the Authority upon the occurrence of any event causing substantial interference with the City's beneficial use and enjoyment of any of the Property and the portion of the Property that is unavailable. The City and the Authority shall, in a reasonable manner and in good faith, determine the amount of such abatement; provided, however, that the Rental Payments due for any Rental Period shall not exceed the annual fair rental value of that portion of the Property available for use and occupancy by the City during such Rental Period. Such abatement shall continue for the period commencing with the date of interference resulting from such damage, destruction, condemnation or title defect and end on the earlier of (i) the date on which the beneficial use



and enjoyment thereof are restored to the City, or (ii) the date on which the City either (x) repairs or replaces the affected Property or substitutes additional property therefore as provided herein, (y) uses the proceeds of insurance or condemnation award to pay the applicable prepayment price therefor or (z) uses legally available funds to pay the applicable prepayment price therefor if no insurance proceeds or condemnation award are available for purposes of the foregoing clause (y). The Term of this Facilities Sublease shall be extended for an Extended Lease Term and further extended successively for any additional Extended Lease Term as a result of the occurrence of any subsequent similar event, except that the term of this Facilities Sublease shall in no event be extended more than ten years beyond the Termination Date and the initial stated term of this Facilities Sublease shall not exceed the maximum term established by the Secretary of the Treasury that is applicable to this Agreement. The date on which abatement ends as determined pursuant to the next preceding sentence is referred to herein as an "Abatement End Date."

The terms and conditions during any Extended Lease Term under this Agreement shall be the same as the terms and conditions during the original lease term, except that (i) the then unpaid aggregate principal component under this Agreement shall be amortized at the applicable interest rate over a period equal to the duration of the then remainder of such original lease term and such Extended Lease Term and with Rental Payments payable on each Rental Payment Date provided in the Base Rental Payment Schedules; (ii) the Authority shall prepare, and the Authority and the City shall execute and deliver, revised Base Rental Payment Schedules based on the factors described in the preceding clause (i); (iii) if the Extended Lease Term does not end on an applicable Rental Payment Date, the final date for payment of Rental Payments shall be the last business day of the Extended Lease Term under this Agreement; and (iv) the City shall take such actions as may be reasonably necessary to maintain the federal tax-exemption of the interest component of the Series A Tax-Exempt Base Rental Payments hereunder, including preparing, executing and filing an information reporting return in compliance with the Code in the event that the revised Base Rental Payment Schedules may result in treatment of such revised Base Rental Payment Schedules as a reissuance of this Facilities Sublease for federal income tax purposes. In connection with the execution and delivery of revised Base Rental Payment Schedules as herein provided, the City shall deliver to the Authority, at the City's expense, a written opinion of special tax counsel (selected by the City and reasonably acceptable to the Authority) with respect to the federal tax matters described in this paragraph. The City shall direct such special tax counsel to cooperate with the Authority in connection with federal tax matters that relate to the calculations that the Authority is required to make as provided in the first sentence of this paragraph. The Authority shall establish the Extended Lease Term, calculate the increased interest component and revised amortization of the then unpaid aggregate principal component hereunder and prepare the revised Base Rental Payment Schedules, all as provided in the first sentence of this paragraph, within thirty days after the Abatement End Date. Once the Authority has prepared such revised Base Rental Payment Schedules, the Authority shall promptly deliver such revised Base Rental Payment Schedules to the City for acceptance, execution and delivery by the City and return to the Authority; *provided* that the revised Base Rental Payment Schedules prepared in accordance with this subsection shall become immediately effective for the period from and after such Abatement End Date upon acceptance by the City.

**Section 4.07. Net-Net-Net Lease.** This Facilities Sublease shall be deemed and construed to be a "net-net-net lease" and the City hereby agrees that the Rental Payments shall be an absolute net

return to the Authority, free and clear of any expenses, charges or set-offs whatsoever and notwithstanding any dispute between the City and the Authority.

## ARTICLE V

### COVENANTS

**Section 5.01. Quiet Enjoyment.** The City , by keeping and performing the covenants and agreements herein contained, shall at all times during the term of this Facilities Sublease peaceably and quietly have, hold and enjoy the Property without suit, trouble or hindrance from the Authority.

**Section 5.02. Right of Entry.** The Authority and its assignees shall have the right to enter upon and to examine and inspect the Property during reasonable business hours and upon reasonable notice of not less than 48 hours (and in emergencies at all times) for any purpose connected with the Authority's rights or obligations under this Facilities Sublease, and for all other lawful purposes.

**Section 5.03. Liens.** The City will not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, other than as herein contemplated and except for such Permitted Encumbrances as the City certifies in writing to the Authority do not materially and adversely affect the leasehold estate in the Property hereunder and for which the Servicer on behalf of the Assignees approves in writing, which approval may not be unreasonably withheld. Except as expressly provided in this Article V, the City will promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim, other than Permitted Encumbrances, if the same shall arise at any time. The City will reimburse the Authority for any expense incurred by it in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

**Section 5.04. Taxes.** The City shall pay or cause to be paid all taxes and assessments of any type or nature charged to the Authority or affecting the Property or the respective interests or estates therein; provided, however, that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the City shall be obligated to pay only such installments as are required to be paid during the term of this Facilities Sublease as and when the same become due.

After giving notice to the Authority, the City or any sublessee may, at the City 's or such sublessee's expense and in its name, in good faith contest any such taxes, assessments, utility and other charges and, in the event of any such contest, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Authority shall notify the City or such sublessee that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Authority in the Property will be materially endangered or the Property, or any part thereof, will be subject to loss or forfeiture, in which event the City or such sublessee shall promptly pay such taxes, assessments or charges or provide the Authority with full security against any loss which may result from nonpayment, in form satisfactory to the Authority.

**Section 5.05. Use of the Property.** The City shall not use, operate or maintain the Property improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Facilities Sublease. In addition, the City shall comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Property) with all laws of the jurisdictions in which its operations may extend and any legislative, executive, administrative or judicial body exercising

any power or jurisdiction over the Property; provided, however, that the City may contest in good faith the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Authority, adversely affect the estate of the Authority in and to any of the Property or its interest or rights under this Facilities Sublease.

**Section 5.06. Environmental Compliance.** (a) The City shall not use or permit the Property or any part thereof to be used to generate, manufacture, refine, treat, store, handle, transport or dispose of, transfer, produce or process Hazardous Materials, except, and only to the extent, if necessary to maintain the improvements on the Property and then, only in compliance with all Environmental Regulations, and any state equivalent laws and regulations, nor shall it permit, as a result of any intentional or unintentional act or omission on its part or by any tenant, subtenant, licensee, guest, invitee, contractor, employee and agent, the storage, transportation, disposal or use of Hazardous Materials or the release or threat of release of Hazardous Materials on, from or beneath the Property or onto any other property excluding, however, those Hazardous Materials in those amounts ordinarily found in the inventory of a city, the use, storage, treatment, transportation and disposal of which shall be in compliance with all Environmental Regulations. Upon the occurrence of any release or threat of release of Hazardous Materials, the City shall promptly commence and perform, or cause to be commenced and performed promptly, without cost to the Authority, all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove all Hazardous Materials so released, on, from or beneath the Property or other property, in compliance with all Environmental Regulations.

(b) The City shall comply with, and shall cause all tenants, subtenants, licensees, guests, invitees, contractors, employees and agents on the Property to comply with, all Environmental Regulations, and shall keep the Property free and clear of any liens imposed pursuant thereto. The City shall remain solely responsible for ensuring such compliance and any noncompliance shall not diminish or affect in any way the City's obligations contained in subsection (c) of this Section. Upon receipt of any notice from any person with regard to the release of Hazardous Materials on, from or beneath the Property, the City shall give prompt written notice thereof to the Authority prior to the expiration of any period in which to respond to such notice under any Environmental Regulation.

(c) The City shall, to the extent permitted by law, defend, indemnify and hold harmless, the Authority and its respective employees, agents, officers, directors, trustees, successors and assigns, from and against any claims, demands, penalties, fines, attorneys' fees (including, without limitation, attorneys' fees incurred to enforce the indemnification contained in this subsection, consultants' fees, investigation and laboratory fees, liabilities, settlements (five Business Days' prior notice of which the Authority shall have delivered to the City ), court costs, damages, losses, costs or expenses of whatever kind or nature, known or unknown, contingent or otherwise, occurring in whole or in part, arising out of, or in any way related to, (i) the presence, disposal, release, threat of release, removal, discharge, storage or transportation of any Hazardous Materials on, from or beneath the Property, (ii) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (iii) any lawsuit brought or threatened, settlement reached (five Business Days' prior notice of which the Authority shall have delivered to the City ), or governmental order relating to Hazardous Materials on, from or beneath the Property, (iv) any violation of Environmental Regulations or subsection (a) or (b) of this Section by it or any of its agents, tenants, employees, contractors, licensees, guests, subtenants or invitees, and (v) the imposition of any governmental lien for the recovery of environmental cleanup or removal costs. To the extent that the City is strictly liable under any Environmental Regulation, its obligation to the Authority and the other indemnitees under the foregoing indemnification shall likewise be without regard to fault on its part and the other indemnities with respect to the violation of any Environmental Regulation which results in



liability to any indemnitee. The obligations and liabilities under this Section shall survive the payment and satisfaction of all Rental Payments.

(d) In connection with its covenants provided in this Section 5.06, the City shall specifically comply with all requirements regarding lead paint and Asbestos Containing Materials, including the Asbestos Hazard Emergency Response Act (referred to as "AHERA" and constituting an Environmental Regulations), and shall inspect the Property and develop, maintain, update and keep copies of relevant management plans at the Property in accordance with all Environmental Regulations. The City shall also maintain all Asbestos Containing Materials and lead paint in an undamaged state and perform any demolition, renovation or other activities in accordance with all Environmental Regulations. As used herein, the term "*Asbestos Containing Materials*" means material in friable form containing more than one percent (1%) of the asbestiform varieties of chrysotile (serpentine), crocidolite (ricbeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite and antinolite

**Section 5.07. Tax Covenants.** The City and the Authority shall at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the interest component of the Series A Tax-Exempt Base Rental Payments will not be included in the gross income of the owner thereof for federal income tax purposes and shall take no action that would result in such interest being so included. In the event all or any portion of the interest component of the Series A Tax-Exempt Base Rental Payments is or becomes includable in gross income of the owner thereof for federal income tax purposes (a "taxable event") as determined by notice or action of the Internal Revenue Service or a written opinion by an attorney or firm of attorneys of nationally recognized standing on the subject of tax-exempt municipal finance (the date of such notice, action or opinion, the "determination date"), then (a) the interest rate applicable to the interest component of the Series A Tax-Exempt Base Rental Payments will be adjusted upwards to an interest rate determined by the Series A Assignee to maintain the same after-tax yield on such Base Rental Payments following the taxable event as it was before the taxable event (the "taxable rate") and the applicable Base Rental Payment Schedules shall be revised accordingly and (b) the City will pay to the Series A Assignee within 30 days of receiving an invoice therefor (i) an additional amount equal to the difference between (A) the interest component paid on the Series A Tax-Exempt Base Rental Payments prior to the determination date and (B) the amount of interest that would have been paid on the Series A Tax-Exempt Base Rental Payments prior to the determination date had such Base Rental Payments borne interest at the taxable rate plus (ii) an amount equal to any interest, penalties on overdue interest and additions to tax applicable to the series A Assignee, as a result of the interest component being includable in gross income of the owner thereof for federal income tax purposes. With respect to the Series B Taxable Base Rental Payments, neither the City nor the Authority shall take any action, or fail to take any action, if such action or failure to take such action would cause (x) the Project to not be a qualified project under Section 54C(a)(3) of the Code or (y) the Series B Taxable Base Rental Payments not to be a "new clean renewable energy bond" for purposes of Section 54C(a) of the Code. Without limiting the generality of the foregoing, the City shall comply with the requirements of the Tax Certificate, which is incorporated herein as if fully set forth herein.

**Section 5.08. Financial Statements.** The City shall, furnish or cause to be furnished to the Authority, at the City's expense (a) the audited financial statements of the City within nine months of the end of each fiscal year of the City, or as soon as practicable thereafter, and (b) any interim or unaudited financial statements that may be reasonably requested by the Authority as soon as available. Any audited financial statements furnished to the Authority shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall fairly present the City's financial condition as of the date of the statements.

**Section 5.09. Authority Covenants.** To the extent permitted by law, the Authority shall, during the term hereof, maintain its existence as a joint powers authority, qualified to do business in the State, and shall not dissolve.

**Section 5.10. Authority Not Liable.** The Authority and its directors, members, officers, agents, employees and successors and assigns (each, an "indemnified party"), shall not be liable to the City or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about the Property. To the extent permitted by law, the City shall, at its expense, indemnify and hold the Authority and all other indemnified parties harmless against and from any and all claims by or on behalf of any person, firm, corporation or governmental authority arising from the acquisition, construction, occupation, use, operation, maintenance, possession, conduct or management of or from any work done in or about the Property or from the subletting of any part thereof, including any liability for violation of conditions, agreements, restrictions, laws, ordinances, or regulations affecting the Property or the occupancy or use thereof, but excepting the gross negligence or willful misconduct of the indemnified party. The City also covenants and agrees, at its expense, to pay and indemnify and save the Authority and all other indemnified parties harmless against and from any and all claims arising from (a) any condition of the Property and the adjoining sidewalks and passageways, (b) any breach or default on the part of the City in the performance of any covenant or agreement to be performed by the City pursuant to this Facilities Sublease, (c) any act or negligence of licensees in connection with their use, occupancy or operation of the Property, or (d) any accident, injury or damage whatsoever caused to any person, firm or corporation in or about the Property or upon or under the sidewalks, and in all cases and from and against all costs, reasonable counsel fees, expenses and liabilities incurred in any action or proceeding brought by reason of any claim referred to in this Section, but excepting the gross negligence or willful misconduct of the indemnified party. In the event that any action or proceeding is brought against the Authority or any indemnified party, by reason of any such claim, the City, upon notice from the Authority or such other indemnified party, covenants to resist or defend such action or proceeding by counsel reasonably satisfactory to the Authority or such other indemnified party.

Notwithstanding the fact that it is the intention of the parties that the Authority and all other indemnified parties shall not incur any pecuniary liability by reason of the terms of this Facilities Sublease, or the undertakings required of the Authority hereunder or any other indemnified party, by reason of the execution or authorization of any document or certification in connection with this Facilities Sublease including, but not limited to, this Facilities Sublease, by reason of the performance or nonperformance of any act required of any of them by this Facilities Sublease or by reason of the performance or nonperformance of any act requested of any of them by the City or the Authority, including all claims, liabilities or losses arising in connection with the violation of any statutes or regulation pertaining to the foregoing; nevertheless, if the Authority or any other indemnified party should incur any such pecuniary liability, then in such event the City shall indemnify and hold harmless the Authority and all other indemnified parties, against all claims by or on behalf of any person, firm, corporation or governmental authority arising out of the same, or in connection with any action or proceeding brought thereon, but excepting the gross negligence or willful misconduct of the indemnified party, and upon notice from the Authority or other indemnified party, the City shall defend the Authority or other indemnified party in any such action or proceeding. This Section shall survive the termination of this Facilities Sublease.

**Section 5.11. Representations of the City.** The City represents and warrants to the Authority that the City has the full power and authority to enter into, to execute and to deliver this Facilities Sublease and the Facilities Lease, and to perform all of its duties and obligations hereunder and

thereunder, and has duly authorized the execution and delivery of this Facilities Sublease and the Facilities Lease.

**Section 5.12. Representation of the Authority.** The Authority represents and warrants to the City that the Authority has the full power and authority to enter into, to execute and to deliver this Facilities Sublease, the Facilities Lease and the Assignment Agreement, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Facilities Sublease, the Facilities Lease and the Assignment Agreement.

**Section 5.13. Authority's Purpose.** The Authority covenants that, prior to the discharge of this Facilities Sublease, the Facilities Lease and the Assignment Agreement, it will not engage in any activities inconsistent with the purposes hereof or thereof or otherwise for which the Authority is organized, as set forth in its Articles of Incorporation and Bylaws.

**Section 5.14. Condemnation.** The City shall not exercise the power of condemnation with respect to the Property. If for any reason the foregoing covenant shall be held by a court of competent jurisdiction to be unenforceable and the City condemns the Property or if the City breaches such covenant, the City agrees that the value of the City's leasehold estate hereunder in the Property shall be not less than the amount sufficient to prepay the Base Rental Payments pursuant to Section 8.03 plus any Additional Payments.

**Section 5.15. Advances.** If the City fails to perform any of its obligations under Articles V or VI and fails to cure such deficiency within 30 days upon receipt of notice from the Authority, or if the City fails to perform any of its obligations under Article VII, the Authority may take such action as may be necessary to cure such failure, including the advancement of money, and the City shall be obligated to repay all such advances as additional rental hereunder, with interest at a rate equal to the interest rate at which the interest component on Base Rental Payments has been calculated plus [5]% per annum or the maximum amount permitted by law, whichever is less.

## ARTICLE VI

### MAINTENANCE; ALTERATIONS; SUBLEASING; SUBSTITUTION

**Section 6.01. Maintenance and Utilities.** Throughout the term of this Facilities Sublease, as part of the consideration for rental of the Property, all improvement, repair and maintenance of the Property shall be the responsibility of the City, and the City shall pay for or otherwise arrange for the payment of all utility services supplied to the Property, which may include, without limitation, janitor service, security, power, gas, telephone, light, heating, ventilation, air conditioning, water and all other utility services, and shall pay for or otherwise arrange for payment of the cost of the repair and replacement of the Property resulting from ordinary wear and tear or want of care on the part of the City or any assignee or sublessee thereof. In exchange for the Rental Payments, the Authority agrees to provide only the Property.

**Section 6.02. Additions to Property.** The City has the right, at its own expense, to make additions, modifications and improvements to the Property or any portion thereof. All additions, modifications and improvements to the Property will thereafter comprise part of the Property and become subject to the provisions of this Facilities Sublease. Such additions, modifications and improvements may not in any way damage the Property, or cause the Property to be used for purposes other than those authorized under the provisions of State and federal law; and the Property, upon completion of any additions, modifications and improvements made thereto under this Section, must be of a value which is not substantially less than the value thereof immediately prior to the making of such additions,

modifications and improvements. The City will not permit any mechanic's or other lien to be established or remain against the Property for labor or materials furnished in connection with any remodeling, additions, modifications, improvements, repairs, renewals or replacements made by the City under this Section; *provided* that if any such lien is established and the City first notifies the Authority of the City's intention to do so, the City may in good faith contest any lien filed or established against the Property, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and will provide the Authority with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the Authority. The Authority will cooperate fully in any such contest, upon the request and at the expense of the City.

**Section 6.03. Installation of City's Equipment.** The City and any sublessee may at any time and from time to time, in its sole discretion and at its own expense, install or permit to be installed items of equipment or other personal property in or upon the Property. All such items shall remain the sole property of the City or such sublessee, and the Authority shall have no interest therein. The City or such sublessee may remove or modify such equipment or other personal property at any time, provided that such party shall repair and restore any and all damage to the Property resulting from the installation, modification or removal of any such items. Nothing in this Facilities Sublease shall prevent the City or any sublessee from purchasing items to be installed pursuant to this Section under a conditional sale or lease purchase contract, or subject to a vendor's lien or security agreement as security for the unpaid portion of the purchase price thereof, provided that no such lien or security interest shall attach to any part of the Property.

**Section 6.04. Assignment and Subleasing.** Neither this Facilities Sublease nor any interest of the City hereunder shall be sold, mortgaged, pledged, assigned, or transferred by the City by voluntary act or by operation of law or otherwise; provided such subletting shall not affect the tax-exempt status of the interest components of the Series A Tax-Exempt Base Rental Payments payable by the City hereunder, as evidenced by an Opinion of Counsel addressed to the Authority and the Series A Assignee to such effect. Notwithstanding the foregoing, the Property may be subleased in whole or in part by the City with the prior written consent of the Authority and the Assignees and, provided further that, any such sublease shall be subject to all of the following conditions:

(a) this Facilities Sublease and the obligation of the City to make all Rental Payments hereunder shall remain the primary obligation of the City;

(b) the City shall, within 30 days after the delivery thereof, furnish or cause to be furnished to the Authority a true and complete copy of such sublease;

(c) no such sublease by the City shall cause the Property to be used for a purpose other than a governmental or proprietary function authorized under the provisions of the Constitution and laws of the State of California;

(d) any sublease of the Property by the City shall explicitly provide that such sublease is subject to all rights of the Authority under this Facilities Sublease, including, the right to re-enter and re-let the Property or terminate this Facilities Sublease upon a default by the City ; and

(e) the City shall furnish the Authority and the Series B Assignee with an Opinion of Counsel to the effect that such sublease will not, in and of itself, adversely affect the status of the CREB as a "*new clean renewable energy bond*" under and as defined in Sections 54A(d)(1)(B) and 54C of the Code.



**Section 6.05. Substitution or Release of the Property.** The City shall have the right to substitute alternate unencumbered real property for any portion of the Property or to release a portion of the Property from this Facilities Sublease pursuant to this Section. All costs and expenses incurred in connection with such substitution or release shall be borne by the City. Notwithstanding any substitution or release pursuant to this Section, there shall be no reduction in or abatement of the Base Rental Payments due from the City hereunder as a result of such substitution or release. Any such substitution or release of any portion of the Property shall be subject to the following specific conditions, which are hereby made conditions precedent to such substitution or release:

(a) the Authority and the Assignees shall have consented in writing to such substitution or release which shall be in its sole discretion;

(b) the City shall have provided the Authority and the respective Assignee with an Opinion of Counsel to the effect that such substitution or release will not, in and of itself, (i) cause the interest component of the Series A Tax-Exempt Base Rental Payments to be included in gross income for federal income tax purposes, or (ii) adversely affect the status of the Series B Taxable Base Rental Payments and CREB as a "*new clean renewable energy bond*" under and as defined in Sections 54A(d)(1)(B) and 54C of the Code;

(c) the City and the Authority shall have executed, and the City shall have caused to be recorded with the San Diego County Recorder, any document necessary to reconvey to the City the portion of the Property being substituted or released and to include any substituted real property in the description of the Property contained herein and in the Facilities Lease;

(d) the City has obtained an CLTA Standard Policy insuring the City's fee interest in the Property being substituted and the Authority's interests in the estate established under the Facilities Lease in the Property being substituted, subject only to Permitted Encumbrances, in an amount equal to the original principal components of the Base Rental Payments and naming both the Servicer and the Assignees as additional insureds;

(e) the City has certified in writing to the Authority and the Assignees that no Event of Default has occurred and is continuing and that the Property being substituted is essential to the City's efficient and economic operation, serves an essential governmental function of the City and constitutes property which the City is permitted to lease under the laws of the State of California, and that the estimated value and the estimated fair rental value of the Property being substituted is at least equal to the estimated value and the estimated fair rental value, respectively, of the former Property as of the date hereof, and that the useful life of the Property being substituted extends to or beyond June 1, 2047. If requested by the Assignees, the City has delivered to the Assignees valuations prepared or confirmed by an independent third party, which might include, without limitation, an appraisal or a valuation by an insurance company. The Property being substituted does not cause the City to violate any of its covenants, representations and warranties made herein. No event giving rise to an abatement of Rental Payments has occurred or is continuing with respect to the Property being substituted; and

(f) the City has delivered to the Assignees an environmental survey or surveys with respect to the proposed substitute Property, and other documents that the Assignees may reasonably require; provided, however, that if the environmental studies have recommended that remedial action be taken with respect to the Property being substituted so that it will be in compliance with applicable Environmental Regulations, the Authority, at the direction of the Assignees, does not have an obligation or duty to accept the proposed substitute Property until such time as the remedial action has been completed and the Assignees have received assurances

to their satisfaction that the proposed substitute Property is in compliance with applicable Environmental Regulations.

## ARTICLE VII

### INSURANCE

**Section 7.01. Public Liability and Property Damage Insurance; Workers' Compensation Insurance; Rental Interruption Insurance.** (a) The City shall maintain or cause to be maintained throughout the term of this Facilities Sublease a standard comprehensive general insurance policy or policies in protection of the City, the Authority and their respective members, officers, agents, employees and assigns. Said policy or policies shall provide for indemnification of said parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of the operation of the Property. Such policy or policies must provide coverage of at least \$1,000,000 per occurrence, \$3,000,000 in aggregate and \$5,000,000 excess liability and may be subject to such deductibles as the City deems adequate and prudent. Such insurance may be maintained as part of or in conjunction with any other insurance coverage carried by the City, and may be maintained in whole or in part in the form of the participation by the City in a joint powers authority or other program providing pooled insurance. The City will apply the proceeds of such liability insurance toward extinguishment or satisfaction of the liability with respect to which such proceeds have been paid.

(b) The City shall maintain or cause to be maintained, throughout the term of this Facilities Sublease, workers' compensation insurance issued by a responsible carrier authorized under the laws of the State to insure employers against liability for compensation under the California Labor Code, or any act enacted as an amendment or supplement thereto or in lieu thereof, such workers' compensation insurance to cover all persons employed by the City in connection with the Property and to cover full liability for compensation under any such act; provided, however, that with the prior written consent of the Servicer at the direction of the Assignees, the City's obligations under this subsection may be satisfied by self-insurance.

(c) The City shall maintain or cause to be maintained casualty insurance insuring the Property against fire, lightning and all other risks covered by an extended coverage endorsement, vandalism, and malicious mischief insurance and sprinkler system leakage insurance, but only including earthquake and flood insurance to the extent provided herein. Said extended coverage insurance shall cover loss or damage by fire, explosion, windstorm, riot, aircraft, vehicle damage, smoke and such other hazards as are normally covered by such insurance, including earthquake coverage if such coverage is available at commercially reasonable cost from a reputable insurer in the reasonable determination of the City. Such insurance shall be in an amount at least equal to the greater of (i) the replacement value of the insured Property, or (ii) the aggregate unpaid principal components of the Base Rental Payments, and may be subject to such deductibles as the City deems adequate and prudent. With the prior written consent of the Servicer at the direction of the Assignees, the City's obligations under this subsection may be satisfied by self-insurance. The Net Proceeds of such casualty insurance shall be applied as provided in Article VIII hereof.

(d) The City shall maintain rental interruption insurance to cover the Authority's loss, total or partial, of Base Rental Payments resulting from the loss, total or partial, of the use of any part of the Property as a result of any of the hazards required to be covered pursuant to subsection (c) of this Section in an amount at least equal to the maximum Base Rental Payments coming due and payable during any future 24-month period. The City's obligations under this subsection may not be satisfied by self-insurance. All Net Proceeds received under said policy or

policies shall be deposited with the Authority and applied to the payment of the Base Rental Payments in the order in which such Base Rental Payments become due and payable.

(e) Should the Property be damaged or destroyed as a result of an event for which federal or State of California disaster aid is available, the Authority and/or the City shall promptly apply for disaster aid. Any disaster aid proceeds received shall be used to repair, reconstruct, restore or replace the damaged or destroyed portions of the Property or, at the option of the City and the Authority, to prepay the Base Rental Payments if permitted under the disaster aid program and the law.

(f) If at any time and for so long as the Property is located in a 100-year flood area as shown on a Flood Insurance Rate Map published by the Federal Emergency Management Agency, the policy or policies of casualty insurance provided under this Section 7.01 shall include insurance against loss or damage to the Property due to flooding. If the City obtains an exception or waiver to the designation of the Property as being within a 100-year flood area from the Federal Emergency Management Agency, the City shall not be required to provide flood insurance as set forth in this subsection (f). To the extent the City fails to procure adequate flood insurance within 30-days after receipt of notification that such flood insurance is required, any Assignee may take such action as is necessary to procure such flood insurance, including advancing payment for such flood insurance, and the City shall be obligated to promptly (within 30 days) repay such Assignee the cost of such flood insurance and all such advances as additional rental hereunder, with interest at the rate set forth in Section 4.04.

(g) The insurance required by this Section shall be provided by carriers rated at least "A" by Fitch, A.M. Best Company or S&P, unless the Assignees shall approve in writing an insurer with a lower rating.

**Section 7.02. Additional Insurance Provision; Form of Policies.** The City shall pay or cause to be paid when due the premiums for all insurance policies required by Section 7.01 hereof. All such policies shall contain such additional insured and loss payee provisions and endorsements as required under Section 7.05. All such policies shall provide that the Authority shall be given 30 days' notice of the expiration thereof, any intended cancellation thereof or any reduction in the coverage provided thereby. The City shall cause to be delivered to the Authority upon request a schedule of the insurance policies being maintained in accordance herewith and a Certificate of the City stating that such policies are in full force and effect and that the City is in full compliance with the requirements of this Article. The City shall, upon request of the Assignee, deliver to the Assignee certificates or duplicate originals or certified copies of each insurance policy described in such schedule. The Authority shall be entitled to rely upon said Certificate of the City as to the City's compliance with this Article. The Authority shall not be responsible for the sufficiency of coverage or amounts of such policies.

**Section 7.03. [Reserved.]**

**Section 7.04. Recordation Hereof; Title Insurance.** On or before the Delivery Date, the City shall, at its expense, (a) cause the Assignment Agreement, the Facilities Lease and this Facilities Sublease, or a memorandum hereof or thereof, to be recorded in the office of the San Diego County Recorder with respect to the Property, and (b) obtain an CLTA Standard Policy insuring the City's fee interest in the Property and Authority's interests in the estate established under the Facilities Lease in the Property, subject only to Permitted Encumbrances, in an amount equal to the original principal components of the Base Rental Payments and naming both the Servicer and the Assignees as additional insureds. The City shall apply the Net Proceeds received under such title insurance policy to prepay Base Rental Payments under Section 8.03(a).



**Section 7.05. Form of Policies.** All insurance policies (or riders) required by this Article VII shall be taken out and maintained with responsible insurance companies organized under the laws of one of the states of the United States and qualified to do business in the State of California, and shall contain a provision that the insurer shall not cancel or revise coverage thereunder without giving written notice to the insured parties at least 30 days before the cancellation or revision becomes effective. Each insurance policy or rider required hereunder shall name the City and the Assignees as additional insured and loss payee and shall include a lender's loss payable endorsement for the benefit of the Assignees. Prior to the date of execution and delivery of this Facilities Sublease, the City will deposit with the Servicer policies (and riders and endorsements, if applicable) evidencing any such insurance procured by it, or a certificate or certificates of the respective insurers stating that such insurance is in full force and effect. Before the expiration of any such policy (or rider), the City will furnish to the Servicer evidence that the policy has been renewed or replaced by another policy conforming to the provisions of this Article VII unless such insurance is no longer obtainable, in which event the City shall notify the Servicer of such fact.

## ARTICLE VIII

### EMINENT DOMAIN; DAMAGE OR DESTRUCTION; PREPAYMENT

**Section 8.01. Eminent Domain.** If all of the Property (or portions thereof such that the remainder is not usable for public purposes by the City) shall be taken under the power of eminent domain, the term hereof shall cease as of the day that possession shall be so taken. If less than all of the Property shall be taken under the power of eminent domain and the remainder is usable for public purposes by the City at the time of such taking, then this Facilities Sublease shall continue in full force and effect as to such remainder, and the parties waive the benefits of any law to the contrary, and in such event there shall be a partial abatement of the Rental Payments in accordance with the provisions of Section 4.06 hereof. Any Net Proceeds received in respect of eminent domain proceedings for the taking of the Property, or any portion thereof, shall be paid to the Authority and applied to the prepayment of Base Rental Payments as provided in Section 8.03(a) hereof. Any such Net Proceeds remaining after all amounts due hereunder have been fully paid, shall be paid to the City.

**Section 8.02. Damage or Destruction.** (a) If the Property or any portion thereof shall be damaged or destroyed, subject to the further requirements of this Section, the City shall, as expeditiously as possible, continuously and diligently prosecute or cause to be prosecuted the repair or replacement thereof, unless the City elects not to repair or replace the Property or the affected portion thereof in accordance with the provisions of subsection (d) of this Section 8.02.

(b) The Net Proceeds of any casualty insurance, including the proceeds of any self-insurance, received on account of any damage or destruction of the Property or a portion thereof shall as soon as possible be deposited by the City in a special account and made available for and, to the extent necessary, shall be applied to the cost of repair or replacement of the Property or the affected portion thereof. The City shall provide the Authority with written evidence of any such deposit.

(c) Notwithstanding the provisions of subsection (b) of this Section, the City shall, within 60 days of the occurrence of the event of damage or destruction, notify the Authority in writing as to whether the City intends to replace or repair the Property or the portions of the Property which were damaged or destroyed. If the City does intend to replace or repair the Property or portions thereof, the City shall deposit in said special account the full amount of any insurance deductible. The City shall provide the Authority with written evidence of any such deposit.

(d) If such damage, destruction or loss was such that there resulted a substantial interference with the City's right to the use and occupancy of the Property and an abatement in whole or in part of Rental Payments would result from such damage or destruction pursuant to Section 4.06 hereof, then the City shall be required either to (i) apply sufficient funds from the insurance proceeds and other legally available funds to the replacement or repair of the Property or the portions thereof which have been damaged to the condition which existed prior to such damage or destruction, or (ii) apply sufficient funds from the insurance proceeds and other legally available funds to the prepayment, as set forth in Section 8.03(a) hereof, in full of such portion of the Base Rental Payments which would be abated as a result of the damage or destruction. Any Net Proceeds of any casualty insurance, including the proceeds of any self-insurance remaining after the portion of the Property which was damaged or destroyed is restored to and made available to the City in substantially the same condition and annual fair rental value as that which existed prior to the damage or destruction as required by clause (i) above or the prepayment of Base Rental Payments as required by clause (ii) above, in each case as evidenced by a Certificate of the City to such effect delivered to the Authority, shall be withdrawn from such special account and used by the City for any lawful purpose. If the City is not required to replace or repair the Property, or the affected portion thereof, as set forth in clause (i) above or to use such amounts to prepay Base Rental Payments as set forth in clause (ii) above, then such Net Proceeds shall, if there is first delivered to the Authority a Certificate of the City to the effect that the annual fair rental value of the Property after such damage or destruction, and after any repairs or replacements made as a result of such damage or destruction, is at least equal to 100% of the maximum amount of Base Rental Payments becoming due under the Facilities Sublease in the then current Rental Period and in any subsequent Rental Period and the fair replacement value of the Property after such damage or destruction is at least equal to the sum of the then unpaid principal components of Base Rental Payments be withdrawn from such special account and used by the City for any lawful purpose.

**Section 8.03. Prepayment.** (a) The City shall prepay on any date from Net Proceeds required pursuant to the provisions hereof to be applied thereto, all or any part of the principal components of the Base Rental Payments then unpaid on a pro-rata basis across Aggregate Rental Payments, at a prepayment price equal to 102% of the principal components of the Base Rental Payments so prepaid, plus the unpaid interest component thereof from the last payment date to the date fixed for prepayment. The City shall provide at least 30 days' prior written notice of its intent to prepay. If prepayment hereunder is in part, the principal components of the Base Rental Payments shall be prepaid in inverse order of due date on a pro-rata basis across Aggregate Rental Payments.

(b) (1) Prior to \_\_\_\_\_, 20\_\_\_\_, the City may prepay either (x) the Series B Taxable Base Rental Payments) in whole on any Base Rental Payment Date on or after the first Base Rental Payment Date by giving written notice to the Authority at least 30 days before the date fixed for prepayment and paying to the Authority a prepayment price equal to 102% of the principal components of all of the outstanding Series B Taxable Base Rental Payments or (y) the Aggregate Rental Payments (i.e. both the Series A Tax-Exempt Base Rental Payments together with the Series B Taxable Base Rental Payments) in whole on any Base Rental Payment Date on or after the first Base Rental Payment Date by giving written notice to the Authority at least 30 days before the date fixed for prepayment and paying to the Authority a prepayment price equal to 102% of the principal components of all of the outstanding Aggregate Rental Payments (consisting of both the Series A Tax-Exempt Base Rental Payments and the Series B Taxable Base Rental Payments), plus the unpaid interest component thereof from the last date that the interest component was paid to the date fixed for prepayment; and (2) on and after \_\_\_\_\_, 20\_\_\_\_, the City may prepay either or both the Series A Tax-Exempt Base Rental Payments and/or the Series B Taxable Base Rental Payments in whole on any Base Rental Payment Date on

or after the first Base Rental Payment Date by giving written notice to the Authority at least 30 days before the date fixed for prepayment and paying to the Authority a prepayment price equal to 102% of the principal components of the Base Rental Payments so prepaid, plus the unpaid interest component thereof from the last date that the interest component was paid to the date fixed for prepayment.

(c) The City agrees that if, following any prepayment hereunder, the Property is damaged or destroyed or taken by eminent domain, the City shall not be entitled to, and by such prepayment waives the right of, abatement of such prepaid Base Rental Payments and shall not be entitled to any reimbursement of such Base Rental Payments.

(d) After the end of the Expenditure Period, all moneys remaining on deposit with the City from the Series B Proceeds (as defined in the Assignment Agreement) portion of the Facilities Lease Payment made by the Authority under the Facilities Lease shall be applied by the City within 90 days following the Expenditure Period, to prepay the principal component of Series B Taxable Base Rental Payments in whole or in part in inverse order of Rental Payment Dates at a prepayment price of 102% of the principal components of the Base Rental Payments so prepaid, plus the unpaid interest component thereof from the last date that the interest component was paid to the date fixed for prepayment.

**Section 8.04. Substitution of Property upon certain circumstances.** In the event of damage to or destruction of all or a portion of the Property due to earthquake or other uninsured casualty for which the proceeds of rental interruption insurance are not available, the City shall, to the extent permitted by law, promptly after the occurrence of such event, subject to the City's compliance with requirements under then applicable State of California law and subject to action by its governing body, use its best efforts to substitute and add as Property under this Facilities Sublease other real or personal property of the City that is unimpaired and unencumbered, the fair rental value of which shall be at least equal to the Rental Payments due during each fiscal year for the remainder of the term of this Facilities Sublease and which shall otherwise satisfy the requirements of this Facilities Sublease.

## ARTICLE IX

### DEFAULTS AND REMEDIES

**Section 9.01. Defaults and Remedies.** (a) (i) If the City shall fail (A) to pay any Rental Payment payable hereunder when the same becomes due and payable, time being expressly declared to be of the essence in this Facilities Sublease, or (B) to maintain insurance as required herein or (C) to keep, observe or perform any other term, covenant or condition contained herein to be kept or performed by the City and fail to cure such deficiency as described in this clause (C) within 30 days upon receipt of notice, or (ii) upon the happening of any of the following events, the City shall be deemed to be in default hereunder and it shall be lawful for the Authority to exercise any and all remedies available pursuant to law or granted pursuant to this Facilities Sublease: if (1) the City's interest in this Facilities Sublease or any part thereof be assigned or transferred, either voluntarily or by operation of law or otherwise, without the written consent of the Authority, as hereinafter provided for, (2) the City or any assignee shall file any petition or institute any proceeding under any act or acts, state or federal, dealing with or relating to the subject or subjects of bankruptcy or insolvency, or under any amendment of such act or acts, either as a bankrupt or as an insolvent, or as a debtor, or in any similar capacity, wherein or whereby the City asks or seeks or prays to be adjudicated a bankrupt, or is to be discharged from any or all of the City's debts or obligations, or offers to the City's creditors to effect a composition or extension of time to pay the City's debts or asks, seeks or prays for reorganization or to effect a plan of reorganization, or for a readjustment of the City's debts, or for any other similar relief, or if any such petition or any such proceedings of the

same or similar kind or character be filed or be instituted or taken against the City, or if a receiver of the business or of the property or assets of the City shall be appointed by any court, except a receiver appointed at the instance or request of the Authority, or if the City shall make a general assignment for the benefit of the City's creditors, (3) any representation, warranty or certification made by the City hereunder or in connection herewith shall have been incorrect or misleading when made, (4) any default occurs under any other agreement for borrowing money or receiving credit under which the City may be obligated as borrower, if such default consists of (A) the failure to pay any amount when due under such agreement or (B) the failure to perform any other obligation thereunder and such failure gives the holder of such agreement the right to accelerate the amounts payable thereunder, or (5) the City shall abandon or vacate the Property, then the City shall be deemed to be in default hereunder. The City shall in no event be in default in the observance or performance of any covenant, condition or agreement in this Facilities Sublease on its part to be observed or performed, other than as referred to in clause (i) or (ii) of the preceding sentence, unless the City shall have failed, for a period of 30 days or such additional time as is reasonably required, but in no event greater than 60 days without the prior written consent of the Authority, to correct any such default after notice by the Authority to the City properly specifying wherein the City has failed to perform any such covenant, condition or agreement. Upon any such default, the Authority, in addition to all other rights and remedies it may have at law, shall have the option to do any of the following:

(b) To terminate this Facilities Sublease in the manner hereinafter provided on account of default by the City, notwithstanding any re-entry or re-letting of the Property as hereinafter provided for in subparagraph (2) hereof, and to re-enter the Property and remove all persons in possession thereof and all personal property whatsoever situated upon the Property and place such personal property in storage in any warehouse or other suitable place within the County of San Diego, for the account of and at the expense of the City. In the event of such termination, the City agrees to surrender immediately possession of the Property, without let or hindrance, and to pay the Authority all damages recoverable at law that the Authority may incur by reason of default by the City, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Property and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained, and such costs, losses and damages shall be payable at the same time and in the same manner as is herein provided in the case of payment of Base Rental Payments and Additional Payments. Any surplus received by the Authority from re-letting shall be applied by the Authority on a pro-rata basis to all Base Rental Payments due under this Facilities Sublease. Neither notice to pay Rental Payments or to deliver up possession of the Property given pursuant to law nor any entry or re-entry by the Authority nor any proceeding in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property nor the appointment of a receiver upon initiative of the Authority to protect the Authority's interest under this Facilities Sublease shall of itself operate to terminate this Facilities Sublease, and no termination of this Facilities Sublease on account of default by the City shall be or become effective by operation of law or acts of the parties hereto, or otherwise, unless and until the Authority shall have given written notice to the City of the election on the part of the Authority to terminate this Facilities Sublease. The City covenants and agrees that no surrender of the Property or of the remainder of the term hereof or any termination of this Facilities Sublease shall be valid in any manner or for any purpose whatsoever unless stated by the Authority by such written notice.

(c) Without terminating this Facilities Sublease, (x) to collect each installment of Rental Payments as the same become due and enforce any other terms or provisions hereof to be kept or performed by the City, regardless of whether or not the City has abandoned the Property, or (y) to exercise any and all rights of entry and re-entry upon the Property. In the event the



Authority does not elect to terminate this Facilities Sublease in the manner provided for in subparagraph (1) hereof, the City shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the City and, if the Property is not re-let, to pay the full amount of the Rental Payments to the end of the term of this Facilities Sublease or, in the event that the Property is re-let, to pay any deficiency in Rental Payments that results therefrom; and further agrees to pay said Rental Payments and/or Rental Payment deficiency punctually at the same time and in the same manner as hereinabove provided for the payment of Rental Payments hereunder, notwithstanding the fact that the Authority may have received in previous years or may receive thereafter in subsequent years Rental Payments in excess of the Rental Payments herein specified, and notwithstanding any entry or re-entry by the Authority or suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Property. Should the Authority elect to re-enter as herein provided, the City hereby irrevocably appoints the Authority as the agent and attorney-in-fact of the City to re-let the Property, or any part thereof, from time to time, either in the Authority's name or otherwise, upon such terms and conditions and for such use and period as the Authority may deem advisable and to remove all persons in possession thereof and all personal property whatsoever situated upon the Property and to place such personal property in storage in any warehouse or other suitable place within the County of San Diego, for the account of and at the expense of the City, and the City hereby indemnifies and agrees to save harmless the Authority from any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such reentry upon and re-letting of the Property and removal and storage of such property by the Authority or its duly authorized agents in accordance with the provisions herein contained. The City agrees that the terms of this Facilities Sublease constitute full and sufficient notice of the right of the Authority to re-let the Property in the event of such re-entry without effecting a surrender of this Facilities Sublease, and further agrees that no acts of the Authority in effecting such re-letting shall constitute a surrender or termination of this Facilities Sublease irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the City the right to terminate this Facilities Sublease shall vest in the Authority to be effected in the sole and exclusive manner provided for in subparagraph (1) hereof. The City further agrees to pay the Authority the cost of any alterations or additions to the Property necessary to place the Property in condition for re-letting immediately upon notice to the City of the completion and installation of such additions or alterations. The City agrees to surrender and quit possession of the Property upon demand of the Authority for the purpose of enabling the Property to be re-let under this paragraph, and the City further waives the right to any rental obtained by the Authority in excess of the Base Rental Payments and hereby conveys and releases such excess to the Authority as compensation to the Authority for its services in re-leasing the Property. The proceeds from the exercise of any remedies under this Facilities Sublease or the Facilities Lease that are applied to pay Base Rental Payments be applied on a pro-rata basis to the Aggregate Rental Payments.

(d) *Proceedings at Law or In Equity.* If an Event of Default occurs and continues hereunder, the Authority may take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due hereunder or to enforce any other of its rights hereunder.

(e) *Remedies under the Facilities Lease.* If an Event of Default occurs and continues hereunder, the Authority may exercise its rights under the Facilities Lease.

The City hereby waives any and all claims for damages caused or which may be caused by the Authority in re-entering and taking possession of the Property as herein provided and all claims for

damages that may result from the destruction of or injury to the Property and all claims for damages to or loss of any property belonging to the City, or any other person, that may be in or upon the Property.

In addition to the other remedies set forth in this Section, upon the occurrence of an event of default, the Authority and the Servicers and the Assignees shall be entitled to proceed to protect and enforce the rights vested in the Authority and the Servicer and the Assignees by this Facilities Sublease or by law.

The provisions of this Facilities Sublease and the duties of the City and of its council, officers or employees shall be enforceable by the Authority or its assignee by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Without limiting the generality of the foregoing, the Authority and its assignee shall have the right to bring the following actions:

(i) *Accounting.* By action or suit in equity to require the City and its council, officers and employees and its assigns to account as the trustee of an express trust.

(ii) *Injunction.* By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the Authority or its assignee.

(iii) *Mandamus.* By mandamus or other suit, action or proceeding at law or in equity to enforce the Authority's or its assignee's rights against the City (and its council, officers and employees) and to compel the City to perform and carry out its duties and obligations under the law and its covenants and agreements with the City as provided herein.

Each and all of the remedies given to the Authority hereunder or by any law now or hereafter enacted are cumulative and the single or partial exercise of any right, power or privilege hereunder shall not impair the right of the Authority to the further exercise thereof or the exercise of any or all other rights, powers or privileges. The term "re-let" or "re-letting" as used in this Section shall include, but not be limited to, re-letting by means of the operation by the Authority of the Property. If any statute or rule of law validly shall limit the remedies given to the Authority hereunder, the Authority nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

In the event the Authority shall prevail in any action brought to enforce any of the terms and provisions of this Facilities Sublease, the City agrees to pay a reasonable amount as and for attorney's fees incurred by the Authority in attempting to enforce any of the remedies available to the Authority hereunder.

Notwithstanding anything to the contrary contained in this Facilities Sublease, the Authority shall have no right upon a default hereunder by the City to accelerate Rental Payments.

(a) Notwithstanding anything herein to the contrary, the termination of this Facilities Sublease by the Authority on account of a default by the City under this Section shall not effect or result in a termination of the lease of the Property by the City to the Authority pursuant to the Facilities Lease.

**Section 9.02. Waiver.** Failure of the Authority to take advantage of any default on the part of the City shall not be, or be construed as, a waiver thereof, nor shall any custom or practice which may grow up between the parties in the course of administering this instrument be construed to waive or to lessen the right of the Authority to insist upon performance by the City of any term, covenant or condition hereof, or to exercise any rights given the Authority on account of such default. A waiver of a particular default shall not be deemed to be a waiver of any other default or of the same default

subsequently occurring. The acceptance of Rental Payments hereunder shall not be, or be construed to be, a waiver of any term, covenant or condition of this Facilities Sublease.

## ARTICLE X

## MISCELLANEOUS

**Section 10.01. Governing Law.** THIS FACILITIES SUBLEASE SHALL BE GOVERNED EXCLUSIVELY BY THE PROVISIONS HEREOF AND BY THE LAWS OF THE STATE OF CALIFORNIA AS THE SAME FROM TIME TO TIME EXIST.

**Section 10.02. Notices.** All written notices, statements, demands, consents, approvals, authorizations, offers, designations, requests or other communications hereunder shall be given to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other parties in writing from time to time, namely:

If to the City: City of National City  
1243 National City Boulevard  
National City, CA 91950  
Attn: City Manager  
Fax No.: (619)

If to the Authority: National City Joint Powers Financing Authority  
1243 National City Boulevard  
National City, CA 91950  
Attn: Executive Director  
Fax No.: (619)

If to the initial Servicer: Banc of America Public Capital Corp  
11333 McCormick Road  
Mail Code: MD5-032-07-05 Hunt Valley, MD 21031  
Attention: Contract Administration  
Fax No.: (443) 541-3057  
E-mail: Terri.preston@bamc.com

Each such notice, statement, demand, consent, approval, authorization, offer, designation, request or other communication hereunder shall be deemed delivered to the party to whom it is addressed (a) if personally served or delivered, upon delivery, (b) if given by electronic communication, whether by telex, telegram or telecopier, upon the sender's receipt of an appropriate answerback or other written acknowledgment, (c) if given by registered or certified mail, return receipt requested, deposited with the United States mail postage prepaid, 72 hours after such notice is deposited with the United States mail, (d) if given by overnight courier, with courier charges prepaid, 24 hours after delivery to said overnight courier, or (e) if given by any other means, upon delivery at the address specified in this Section.

**Section 10.03. Validity and Severability.** If for any reason this Facilities Sublease shall be held by a court of competent jurisdiction to be void, voidable or unenforceable by the Authority or by the City, or if for any reason it is held by such a court that any of the covenants and conditions of the City hereunder, including the covenant to pay Rental Payments, is unenforceable for the full term hereof, then and in such event this Facilities Sublease is and shall be deemed to be a Facilities Sublease under which the Rental Payments are to be paid by the City annually in consideration of the right of the City to



possess, occupy and use the Property, and all of the terms, provisions and conditions of this Facilities Sublease, except to the extent that such terms, provisions and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

**Section 10.04. Section Headings.** All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Facilities Sublease.

**Section 10.05. Amendments.** This Facilities Sublease and the Facilities Lease, and the rights and obligations of the Authority and the City hereunder and thereunder, may be amended at any time by an amendment hereto or thereto which shall become binding upon execution by the City and the Authority.

**Section 10.06. Assignment to Assignees; Effect; Restrictions on Assignments.** (a) The City understands and agrees that, upon the execution and delivery of the Assignment Agreement (which is occurring simultaneously with the execution and delivery hereof), all right, title and interest of the Authority in and to this Facilities Sublease and the Facilities Lease (collectively, the "Assigned Rights") will be sold, assigned and transferred on a pro rata basis to the respective Assignees. The City hereby consents to such sale, assignment and transfer. Upon the execution and delivery of the Assignment Agreement, references in the operative provisions hereof to the Authority shall be deemed to be references to the Assignees, as assignee of the Authority, provided however that none of the Assignees or the Servicer is responsible for any obligations of the Authority under this Facilities Sublease.

(b) The respective portion of the Assigned Rights may be further assigned and reassigned in whole or in part to one or more assignees or subassignees by the Assignees (including, but not limited to, in connection with the creation of fractional interests with institutional investors so long as such assignment complies with applicable State law), without the necessity of obtaining the consent of the City; *provided*, that any such assignment, transfer or conveyance (i) shall be made only to investors each of whom the transferor Assignee reasonably believes is a "*qualified institutional buyer*" as defined in Rule 144A(a)(1) promulgated under the Securities Act of 1933, as amended (the "*Securities Act*") or an "*accredited investor*" as defined in Sections 501(a)(1), (2), (3) and (7) of Regulation D promulgated under the Securities Act and is purchasing the Assigned Rights (or any interest therein) for its own account with no present intention to resell or distribute the Assigned Rights (or interest therein), subject to each investor's right at any time to dispose of the Assigned Rights or any interest therein as it determines to be in its best interests, (ii) shall not result in more than 35 owners of the Assigned Rights or the creation of any interest in the Assigned Rights in an aggregate principal component that is less than \$100,000, (iii) shall not require the City to make Base Rental Payments, send notices or otherwise deal with respect to matters arising under this Facilities Sublease with or to more than one trustee, owner, servicer or other fiduciary or agent or entity (herein referred to as the "*Lease Servicer*") and any trust agreement, participation agreement or custodial agreement under which multiple ownership interests in the Assigned Rights are created shall provide the method by which the owners of such interests shall establish the rights and duties of a single Lease Servicer to act on their behalf with respect to the Assigned Rights, including with respect to the exercise of rights and remedies on behalf of such owners upon the occurrence of an Event of Default hereunder and (iv) prior to \_\_\_\_\_, 20\_\_, shall be subject to the following limitation: if Banc of America Public Capital Corp and/or one of its affiliates (each a "BofA Entity") are both the Series A Assignee and the Series B Assignee, the Series A Assignee may only assign its Assigned Rights if the Assigned Rights of both Assignees are assigned to one or more subsequent assignees or subassignees at the same time; provided that the restriction on assignment set forth in this clause (iv) shall no longer apply (A) if any Event of Default, or event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default, occurs, or (B) if at any time neither the Series A Assignee nor the Series B Assignee is a BofA Entity. The Authority

(including the initial Assignees pursuant to the Assignment Agreement) and the City hereby acknowledge and agree that the restrictions and limitations on transfer as provided in this Section 10.06 shall apply to the first and subsequent assignees and sub-assignees of any of the Assigned Rights (or any interest therein).

(c) No assignment, transfer or conveyance permitted by this Section 10.06 that changes the Lease Servicer or its payment instructions or mailing address shall be effective until the City shall have received a written notice of assignment that discloses the name, payment instructions and address of each such assignee; *provided*, that if such assignment is made to a bank or trust company as trustee or paying agent for owners of certificates of participation, trust certificates or partnership interests evidencing interests in the Assigned Rights, it shall thereafter be sufficient that the City receives notice of the name, payment instructions and address of such bank or trust company that acts as the Lease Servicer. During the term of this Facilities Sublease, the City shall, if necessary to comply with applicable law, including any applicable federal tax law, keep, or cause to be kept, a complete and accurate record of all such assignments in form necessary to comply with such laws. The City shall retain all such notices as a register of all Assignees and shall make all payments to the respective Assignee or Lease Servicer designated in such register. The City shall not have the right to, and shall not, assert against the initial Assignee or any subsequent Assignee any claim, counterclaim or other right that the City may have against the Authority. If an Assignee notifies the City of its intent to assign its portion of the Assigned Rights (or any interest therein) to a different Assignee, the City agrees that it shall execute and deliver to the requesting Assignee a notice and acknowledgment of assignment in form reasonably required by such Assignee within five (5) business days after its receipt of such request.

**Section 10.07. Execution in Counterparts.** This Facilities Sublease may be simultaneously executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Facilities Sublease to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**CITY OF NATIONAL CITY**

By: \_\_\_\_\_  
City Manager

**NATIONAL CITY JOINT POWERS  
FINANCING AUTHORITY**

By: \_\_\_\_\_  
Chairman

## **EXHIBIT A**

### **DESCRIPTION OF THE PROPERTY**

Real property in the State of California, County of San Diego Unincorporated and described as follows:

PARCEL A: (APN: 560-013-07-00 and 560-013-08-00

PARCEL(S) 1 AND 2 OF PARCEL MAP NO. 4027, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AUGUST 21, 1975 AS FILE NO. 75-224074 OF OFFICIAL, RECORDS.

PARCEL B: APN: 560-013-02-00

THE WEST 33-1/3 FEET OF LOTS 7 TO 10, INCLUSIVE, IN BLOCK 13 OF THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 348, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL C: APN: 560-013-03-00

THE WESTERLY 33 1/3 FEET OF THE EASTERLY 66 2/3 FEET OF LOTS 7 TO 10 INCLUSIVE IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL D: APN: 560-013-04-05

THE EASTERLY 33 1/3 FEET OF LOTS 7, 8, 9 AND 10 OF BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL E: APN: 560-013-05-15

THE SOUTHERLY 100 FEET OF LOT 11 AND THE SOUTHERLY 100 FEET OF THE WESTERLY EIGHT AND ONE-THIRD FEET OF LOT 12 EN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL F: APN: 560-013-06-00

LOTS 13 THROUGH 17 IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL G: APN: 560-013-09-00

LOT 6, THE NORTH 25 FEET OF LOTS 11 AND 12 AND THE EAST 16 2/3 FEET OF SOUTH 100 FEET OF LOT 12, ALL IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL H:

A. PERMANENT EASEMENT AND RIGHT-OF-WAY TO CONSTRUCT, RECONSTRUCT, MAINTAIN, OPERATE AND REPAIR AN UNDERGROUND EMERGENCY GENERATOR FUEL TANK, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF 12TH STREET, LYING NORTHERLY OF BLOCK 13 OF MAP NUMBER 348, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID BLOCK 13, BEING ALSO THE NORTHWESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF SAID PARCEL 1.75 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID NORTHERLY LINE, EIGHT FEET; THENCE LEAVING SAID NORTHERLY LINE, AT RIGHT ANGLES, NORTH SIX FEET; THENCE WESTERLY, PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 1, EIGHT FEET; THENCE AT RIGHT ANGLES, SOUTH, SIX FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 48 SQUARE FEET.

APN: 560-013-07-00; 560-013-08-00; 560-013-020-00; 560-013-03-00; 560-013-04-00;  
560-013-05-00; 560-013-06-00; 560-013-09-00

(End of Legal Description)

**EXHIBIT B-1**

**SERIES A TAX-EXEMPT BASE RENTAL**

<b>Due Date</b>	<b>Principal Component</b>	<b>Interest Component</b>	<b>Total Series A Tax-Exempt Base Rental Payments</b>

**EXHIBIT B-2**

**SERIES B TAXABLE BASE RENTAL PAYMENT SCHEDULE**

<b>Due Date</b>	<b>CREB Principal</b>	<b>CREB Interest</b>	<b>Total Series B Taxable Base Rental Payment</b>



## EXHIBIT C

### FORM OF ASSIGNEE LETTER OF REPRESENTATIONS

City of National City  
National City, California

Re: Assignment of Facilities Sublease dated as of July 1, 2017], between the City of National City and the National City Joint Powers Financing Authority

Dear Sir/Madam:

A pro rata portion of the rights of the National City Joint Powers Financing Authority (the "Authority") under the Facilities Lease dated as of July 1, 2017, between the Authority and the City of National City (the "City"), and the Facilities Sublease dated as of July 1, 2017 (the "Facilities Sublease"), between the City and the Authority (collectively, the "Assigned Property"), including the right to receive \_\_\_\_\_% of the [Series A Tax-Exempt Base Rental Payments] [the Series B Taxable Base Rental Payments] (as defined in the Facilities Sublease), are being assigned to the undersigned (the "Assignee"). Capitalized undefined terms used herein shall have the meanings ascribed thereto in the Facilities Sublease.

The Assignee hereby certifies, represents, warrants, acknowledges and covenants to the City as follows:

- (a) The Assignee understands and acknowledges that the City will rely on the certifications, representations, warranties, acknowledgements and covenants contained in this Letter of Representations.
- (b) The Assignee is duly organized, validly existing and in good standing under the laws of the jurisdiction in which it was incorporated or formed and is authorized to accept the assignment of the Assigned Property.
- (c) The Assignee (MARK OR INDICATE APPROPRIATELY):
  - [ ] is a "qualified institutional buyer" (a "Qualified Institutional Buyer") within the meaning of Rule 144A promulgated under the Securities Act of 1933, as amended (the "Securities Act"), or
  - [ ] is an "accredited investor" as described in Section 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act (an "Institutional Accredited Investor").
- (d) The Assignee understands and acknowledges that, under the provisions of the Facilities Sublease, the Assigned Property is subject to the transfer limitations described in the Facilities Sublease and in the Assignment Agreement.

- (e) The Assignee has sufficient knowledge and experience in financial and business matters, including the acquisition and ownership of municipal obligations similar to the Assigned Property, to be capable of evaluating the merits and risks of its accepting the assignment of and retaining ownership of the Assigned Property. The Assignee is a lender that regularly extends credit by acquiring loans in the form of state and local government obligations such as the Facilities Sublease in the normal course of its business, and the Assignee is able to bear the economic risks of such a financial transaction.
- (f) Except to the extent provided in the Facilities Sublease, the Facilities Lease and the Assignment Agreement, and the documents and other information delivered pursuant thereto (including without limitation opinions and title reports), the Assignee is not relying upon the City or its employees or consultants for advice as to the merits and risks of acquiring the Assigned Property and the Assignee has not relied upon the City's legal counsel, financial advisor, placement agent(s), facilities consultant, or other consultants to the City for any information, representations, or opinions regarding the City, the Property, the Assigned Property, or the Assignee's acquisition of the Assigned Property, other than those contained in the Facilities Lease and the Facilities Sublease. The Assignee has sought such accounting, legal, and tax advice as it has considered necessary to make an informed decision concerning its acquisition of the Assigned Property.
- (g) The Assignee has conducted its own independent examination of, and has had an opportunity to ask questions and receive answers concerning, the City, the Assigned Property and the security therefor, and the transactions and documents related to or contemplated by the foregoing.
- (h) The Assignee has been furnished with, or given access to, all documents and information that the Assignee has requested regarding the City, the Property, the Assigned Property and the security therefor, and the transactions and documents related to or contemplated by the foregoing, and all matters related thereto.
- (i) The Assignee understands that no official statement, offering memorandum, or circular has been or will be issued in connection with the assignment of the Assigned Property and that the Assigned Property and underlying obligations are not rated by any accredited rating agency.
- (j) The Assignee understands that the Facilities Sublease has not been registered under the Securities Act and that such registration is not legally required. Additionally, the Facilities Sublease has not been registered, and no qualification for sale has been made, under the Blue Sky Laws of any state. The Assignee will not sell, convey, pledge, or otherwise transfer the Assigned Property without prior compliance with applicable state and federal laws and the provisions of the Facilities Sublease and this Letter of Representations. The Assignee is not acting in the capacity of broker, dealer, municipal securities underwriter, placement agent, financial advisor, or municipal advisor in connection with its acquisition of the Assigned Property.

- (k) The person executing this letter on behalf of the Assignee is duly authorized to do so on the Assignee's behalf.

IN WITNESS WHEREOF, the Assignee has executed this Letter of Representations as of the date set forth below.

Dated: \_\_\_\_\_, 2027

Firm Name:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public

## **CERTIFICATE OF ACCEPTANCE**

This is to certify that the interest in the real property conveyed by the foregoing FACILITIES SUBLEASE, dated July 1, 2017 (the "Facilities Sublease"), from the NATIONAL CITY JOINT POWERS FINANCING AUTHORITY to the CITY OF NATIONAL CITY (the "City"), a governmental agency, is hereby accepted by the undersigned officer on behalf of the City Council of the City (the "City Council") pursuant to authority conferred by resolution of the City Council adopted on June 20, 2017, and the City, as grantee, consents to recordation thereof by its duly authorized officer.

I have executed this Certificate of Acceptance on July 6, 2017.

CITY OF NATIONAL CITY

By: \_\_\_\_\_

TO BE RECORDED AND WHEN  
RECORDED RETURN TO:

Nossaman LLP  
18101 Von Karman Avenue, Suite 1800  
Irvine, CA 92612  
Attention: Albert R. Reyes, Esq.

THIS TRANSACTION IS EXEMPT FROM CALIFORNIA DOCUMENTARY TRANSFER  
TAX PURSUANT TO SECTION 11929 OF THE CALIFORNIA REVENUE AND  
TAXATION CODE. THIS DOCUMENT IS EXEMPT FROM RECORDING FEES  
PURSUANT TO SECTION 27383 OF THE CALIFORNIA GOVERNMENT CODE.

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ASSIGNMENT AGREEMENT

by and among the

NATIONAL CITY JOINT POWERS FINANCING AUTHORITY,  
BANC OF AMERICA PUBLIC CAPITAL CORP, as Series A Assignee, and  
BANC OF AMERICA LEASING & CAPITAL, LLC, as Series B Assignee

Dated as of July 1, 2017

---



## **ASSIGNMENT AGREEMENT**

**THIS ASSIGNMENT AGREEMENT** (this "Assignment Agreement"), executed and entered into as of July 1, 2017, is by and among the NATIONAL CITY JOINT POWERS FINANCING AUTHORITY, a joint exercise of powers authority organized and existing under the laws of the State of California (the "Authority"), BANC OF AMERICA PUBLIC CAPITAL CORP, a Kansas corporation and its successors and assigns as assignee of the Assigned Series A Rights (the "Series A Assignee), and BANC OF AMERICA LEASING & CAPITAL, LLC, a limited liability corporation organized under the laws of the United States of America and its successors and assigns as assignee of the Assigned Series B Rights (the "Series B Assignee").

### **WITNESSETH:**

**WHEREAS**, pursuant to a Facilities Lease, dated as of the date hereof (the "Facilities Lease"), which Facilities Lease is recorded concurrently herewith, the City of National City (the "City") has leased to the Authority certain real property owned by the City and the improvements thereon consisting of the City's police facility located at 1200 National City Boulevard, National City, California (the "Property"); and

**WHEREAS**, the Property is more particularly described in Exhibit A hereto; and

**WHEREAS**, pursuant to a Facilities Sublease, dated as of the date hereof (the "Facilities Sublease"), the Authority has leased the Property back to the City; and

**WHEREAS**, under the Facilities Sublease, the City is obligated to make Base Rental Payments (as defined in the Facilities Sublease) to the Authority for the lease of the Property; and

**WHEREAS**, the City will make two series of Base Rental Payments, designated the "Series A Tax-Exempt Base Rental Payments" (being the tax-exempt portion of the Base Rental Payments related to financing the Project) and the "Series B Taxable Base Rental Payments" (being the taxable portion of the Base Rental Payments related to the CREB) and additional rental payments for the use and occupancy of the Property on the terms and conditions contained in this Facilities Sublease;

**WHEREAS**, the Authority desires to assign, without recourse, on a pro-rata basis certain of its rights in the Facilities Lease and the Facilities Sublease, including its rights to receive the respective portion of Base Rental Payments under the Facilities Sublease, to the respective Assignee; and

**WHEREAS**, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Assignment Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Assignment Agreement;

**NOW, THEREFORE**, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

**Section 1. Payment; Application.** In consideration of the sale, assignment and transfer to the Series A Assignee of all of the Authority's right, title and interest in the Series A Tax-Exempt Base Rental Payments and the Series A Assignee Pro Rata Percentage of the Authority's right, title and interest in to the Facilities Lease and the Facilities Sublease, as provided herein, the Series A Assignee shall pay to, or upon the order of, the Authority an amount equal to \$\_\_\_\_\_ (the "Series A Proceeds"). In consideration of the sale, assignment and transfer to the Series B Assignee of all of the Authority's right, title and interest in the Series B Taxable Base Rental Payments and the Series B Assignee Pro Rata Percentage of the Authority's right, title and interest in to the Facilities Lease and the Facilities Sublease, as provided herein, the Series B Assignee shall pay to, or upon the order of, the Authority an amount equal to \$\_\_\_\_\_ (the "Series B Proceeds"). Upon receipt of the Series A Proceeds and the Series B Proceeds, the Authority shall apply such amount, or cause the same to be applied, to the payment of the Facilities Lease Payment pursuant to the Facilities Lease.

**Section 2. Assignment.** The Authority, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby sell, assign and transfer to (a) the Series A Assignee, irrevocably and absolutely, without recourse, all of the Assigned Series A Rights, and (b) the Series B Assignee, irrevocably and absolutely, without recourse, all of the Assigned Series B Rights (collectively, the Assigned Series A Rights and the Assigned Series B Rights are referred to as the "Assigned Property"). This assignment is absolute and is presently effective.

**Section 3. Acceptance.** Each Assignee hereby accepts the foregoing assignment and the rights so assigned shall be exercised by the Lease Servicer on behalf of the respective Assignees as provided in the Facilities Sublease.

**Section 4. Conditions.** Excepting only the sale, assignment and transfer to each Assignee of the respective and pro-rata portion Authority's right, title and interest in and to the Facilities Lease and the Facilities Sublease pursuant to Section 1 hereof, this Assignment Agreement shall impose no obligations whatsoever upon the Assignees beyond those expressly provided in the Facilities Sublease.

**Section 5. Representations and Warranties of the Authority.** The Authority represents and warrants to the Assignees as follows:

(a) The Authority is a joint powers authority duly organized, existing and in good standing under the laws of the State.

(b) The Authority has duly authorized and executed this Assignment Agreement, the Facilities Lease and the Facilities Sublease in accordance with the laws of the State.

(c) The Authority has the power to enter into this Assignment Agreement, the Facilities Lease and the Facilities Sublease, has duly authorized the execution and delivery of this Assignment Agreement, the Facilities Lease and the Facilities Sublease, and this Assignment Agreement, the Facilities Lease and the Facilities Sublease constitute the legal, valid and binding

obligations of the Authority, enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(d) There are no present and outstanding claims on or involving the Authority's right, title and interest in and to the Facilities Lease or the Facilities Sublease, or the Base Rental Payments payable thereunder, sold, assigned and transferred by the Authority to the Assignees hereunder.

(e) The Authority has sold, assigned and transferred to each Assignee good and marketable title to the respective portion of the Assigned Property and the pro-rata portion of the Authority's right, title and interest in and to the Facilities Lease and the Facilities Sublease, free and clear of any liens, security interests, encumbrances or other claims, and the Authority has not sold, assigned or transferred any of such right, title and interest assigned hereunder to any party other than the respective Assignee.

(f) The execution and delivery of the Facilities Lease, the Facilities Sublease and this Assignment Agreement, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, do not and will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which the Authority is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Authority, which conflict, violation, breach, default, lien, charge or encumbrance would have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Facilities Lease, the Facilities Sublease and this Assignment Agreement or the financial condition, assets, properties or operations of the Authority.

(g) No consent or approval of any trustee or holder of any indebtedness of the Authority, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority is necessary in connection with the execution and delivery by the Authority of the Facilities Lease, the Facilities Sublease and this Assignment Agreement, or the consummation of any transaction herein or therein contemplated, except as have been obtained or made and as are in full force and effect, or except as would not materially adversely affect the transactions contemplated hereby.

(h) There is no action, suit, proceeding, inquiry or investigation before or by any court or federal, state, municipal or other governmental authority pending or, to the knowledge of the Authority after reasonable investigation, threatened against or affecting the Authority or the assets, properties or operations of the Authority which, if determined adversely to the Authority or its interests, would have a material and adverse effect upon the consummation of the transactions contemplated by or the validity of the Facilities Lease, the Facilities Sublease and this Assignment Agreement, or upon the financial condition, assets, properties or operations of the Authority, and the Authority is not in default with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental

authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Facilities Lease, the Facilities Sublease and this Assignment Agreement or the financial condition, assets, properties or operations of the Authority.

**Section 6. No Right to Amend; No Impairment.** The Authority acknowledges and agrees that, as a consequence of the sale, assignment and transfer of the Authority's right, title and interest in and to the Facilities Sublease and Facilities Lease hereunder, the Authority has no right to amend, modify, compromise, release or terminate the Facilities Sublease or the Facilities Lease. The Authority shall not take any action that may impair the payment of any of the Base Rental Payments or the validity or enforceability of the Facilities Sublease or the Facilities Lease.

**Section 7. Limitation on Further Assignment.** Each Assignee hereby acknowledges that Section 10.06 of the Facilities Sublease places certain limitations on any future assignment of its respective portion of the Assigned Property. Each Assignee hereby acknowledges and agrees that any future assignment of its respective portion of the Assigned Property may only be made in accordance with Section 10.06 of the Facilities Sublease. This Section shall not be amended or revised without the express prior written consent of the City.

**Section 8. Authority's Receipt of Base Rental Payments.** The respective Base Rental Payments received by the Authority or other amount properly payable to an Assignee and received by the Authority shall be received in trust for such Assignee, and the Authority shall immediately deliver such Base Rental Payments and other amounts to the applicable Assignee in the form received and, if applicable, duly endorsed by the Authority for deposit by such Assignee. The Assignees are secured on a pro-rata basis under the Facilities Lease and the Facilities Sublease with respect to all proceeds thereunder following an Event of Default.

**Section 9. Further Assurances.** The Authority shall make, execute and deliver any and all such further resolutions, instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Assignment Agreement, and for the better assuring and confirming to the Assignees, the rights, titles and interests intended to be sold, assigned and transferred pursuant hereto.

**Section 10. Financing Statements.** The Authority shall execute and deliver to the Assignees such notices of assignment, UCC financing statements, assignments of financing statements and other documents, in form and substance reasonably satisfactory to the Assignees, and the Authority shall take such other actions, as the Assignees may reasonably request from time to time to evidence, perfect, maintain and enforce each Assignee's rights in the right, title and interest of the Authority assigned hereunder. Any Assignee may, where permitted by law, file such UCC financing statements without the Authority's signature.

**Section 11. Servicer for Title Insurance Policy.** (a) The Authority and each Assignee hereby agree that Banc of America Public Capital Corp, shall act as servicer (in such capacity, the "Servicer") solely for the purpose of (1) exercising rights and remedies under the Facilities Lease and Facilities Sublease on behalf of the Assignees and (2) being named and acting as an insured under the Title Insurance Policy (as hereinafter defined) and, as such insured, making



any claim and exercising related rights or interests of an insured thereunder for the benefit of the Assignees (including their successors by operation of law and any successor Servicer as provided in subsection (e) of this Section 11) and any assignees of the rights and interests of the Assignees under the Facilities Sublease (herein referred to as "Subsequent Assignees"). Banc of America Public Capital Corp hereby agrees to act as Servicer for the purpose and on the terms provided in this Section 11 from the date hereof to the date on which the Facilities Lease expires or terminates in accordance with its terms. As used herein, "Title Insurance Policy" shall mean, collectively, the Policy of Title Insurance issued by Stewart Title Guaranty Company relating to the title policy obtained by the City pursuant to Section 7.04 of the Facilities Sublease.

(a) Upon being advised of any Assignee's discovery of any material defect in title to the Property or upon the Servicer's receipt of written notice from any Subsequent Assignee with respect to a material defect in title to the Property, in either case that has given, or may give, rise to a claim under the Title Insurance Policy, the Servicer shall take such actions as it may determine to be necessary or advisable to make a claim and otherwise exercise its rights and interests as a named insured under the Title Insurance Policy; *provided*, that if any Assignee or a Subsequent Assignee has transferred all of its rights and interests in the Facilities Lease and the Facilities Sublease to a Subsequent Assignee that then owns 100% of the Assignee's rights and interests in the Facilities Lease and the Facilities Sublease, the Servicer shall have no obligation to take any action under this Section 11 except at the written direction and expense of such Subsequent Assignee; and *provided, further, however*, that if any Assignee or a Subsequent Assignee has transferred its rights and interests in the Facilities Lease and the Facilities Sublease to more than one Subsequent Assignee that then own (by fractional, participation or other interest) 100% of the Assignee's rights and interests in the Facilities Lease and the Facilities Sublease, the Servicer shall have no obligation to take any action under this Section 11 except at the written direction and expense of such Subsequent Assignees that then own at least a majority in Aggregate Rental Payments outstanding under the Facilities Sublease. Nothing in this Section 11 is intended, or shall be construed, to obligate the Servicer at any time to seek out or determine whether any material title defect exists or may hereafter exist.

(b) All proceeds received by the Servicer with respect to a claim under the Title Insurance Policy shall be applied *first* to pay all expenses incurred in the collection and administration thereof (including to the Servicer to the extent not otherwise paid as provided in subsection (b) of this Section 11) and then the Net Proceeds shall be applied as provided in Sections 8.02 and 8.03 of the Facilities Sublease. For any period during which such insurance proceeds are held by the Servicer, the Servicer shall hold Net Proceeds in a non-interest bearing account as fiscal agent for the ratable benefit of the then owners of 100% in aggregate principal component of Base Rental Payments under the Facilities Sublease until applied in accordance with Sections 8.02 and 8.03 of the Facilities Sublease, but need not be segregated in any manner from any other monies of the Servicer and may be deposited by the Servicer in any general account maintained by the Servicer.

(c) The Servicer undertakes to perform, as Servicer for the Title Insurance Policy as herein provided, such duties and only such duties as are specifically set forth herein, and no implied covenants or obligations shall be read into this Section 11 against the Servicer. The Servicer shall not be liable to any Assignee or any Subsequent Assignee for any action taken or omitted to be taken by it in good faith as Servicer under this Section 11. The Servicer may rely

and shall be protected in acting or refraining from acting upon any written direction or certificate of the Required Assignees reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties. The Servicer shall not be bound to make any investigation into the facts or matters stated in any such written direction or certificate. The Servicer shall not be required to take any action nor shall any provision set forth in this Section 11 be deemed to impose a duty on the Servicer to take any action, if the Servicer shall have been advised by counsel that such action is contrary to the terms of the Title Insurance Policy or is otherwise contrary to law.

(d) The owners of at least a majority in aggregate principal component of Base Rental Payments outstanding may at any time remove the Servicer initially appointed and any successor thereto and may appoint a successor or successors thereto by an instrument in writing. The Servicer may at any time resign by giving written notice of such resignation to the then owners of 100% in aggregate principal component of Base Rental Payments outstanding. Upon receiving such notice of resignation, the then owners of at least a majority in aggregate principal component of Base Rental Payments outstanding shall promptly appoint a successor Servicer. Any removal or resignation of a Servicer and appointment of a successor Servicer shall become effective only upon the acceptance of appointment by the successor Servicer. The successor Servicer shall send written notice of its acceptance to the owners of 100% in aggregate principal component of Base Rental Payments outstanding.

(e) Each Assignee shall, promptly upon the loan or credit officer(s) principally responsible for the administration of its portion of the Assigned Property (each, a "Responsible Officer") obtaining actual knowledge of the existence of any Event of Default or any event or condition which, with notice, the passage of time or any combination of the foregoing, would constitute an Event of Default (other than pursuant to a notice delivered to it by Servicer), deliver a written notice of such Event of Default (each, a "Notice of Default") to the other Assignees and the Servicer. If any Event of Default under the Facilities Sublease that is specific to a particular Assignee's portion of the Assigned Property is cured or waived, the affected Assignee shall promptly deliver to the Servicer and the other Assignees notice that such Notice of Default has been rescinded. A Notice of Default shall be deemed to have been given when the notice referred to in the preceding sentence has actually been received by the Servicer and to have been rescinded when the Servicer has actually received from an Assignee notice withdrawing such Notice. Each Assignee shall, promptly upon a Responsible Officer obtaining actual knowledge of the existence of any abatement event or taxable event under the Facilities Sublease or any failure of the City to make any Rental Payment as and when due (other than pursuant to a notice delivered to it by the Servicer), deliver a written notice of such abatement event or taxable event or failure of the City to make any Rental Payment to the other Assignees and the Servicer. At any time when an Event of Default or abatement event shall have occurred and be continuing, the Servicer shall exercise all such rights, powers and remedies as shall be available to the Assignees under the Facilities Sublease in accordance with any written request or direction (which may relate to the exercise of specific remedies or to the exercise of remedies in general) received from the holders of a majority of the Aggregate Rental Payments outstanding under the Facilities Sublease (the "Required Assignees"), after compliance with subsection (h) below. The Servicer may exercise such rights, powers and remedies in its own name or in the name of the Assignees.



(f) The Servicer will give the Assignees written notice (a "Notice of Abatement" or "Notice of Taxability" or "Notice of Payment Failure", as applicable) of any actual or anticipated abatement event or taxable event under the Facilities Sublease or any failure of the City to make any Rental Payment as and when due of which it is notified in writing by the City, the Authority or an Assignee, within five (5) Business Days after receipt of such notice from the City, the Authority or an Assignee.

(g) Following delivery by the Servicer of a Notice of Default or a Notice of Abatement, the Assignees will consult with each other in good faith for a period of not less than twenty (20) days (or such shorter or longer period agreed to by all of the Assignees) regarding a strategy for the exercise of the Assignees' remedies under the Facilities Sublease. Following such period of consultation, the Required Assignees may provide instructions to the Servicer from time to time with respect to the exercise of the Assignees' remedies under the Facilities Sublease.

**Section 12. Governing Law.** This Assignment Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

**Section 13. Execution in Counterparts.** This Assignment Agreement may be simultaneously executed in several counterparts, each of which shall be deemed to be an original and all of which shall constitute but one and the same instrument.

**Section 14. Captions.** The captions or headings in this Assignment Agreement are for convenience only and in no way define or limit the scope or intent of any provision of this Assignment Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment Agreement to be executed by their respective officers thereunto duly authorized, all as of the day and year first written above.

**NATIONAL CITY JOINT POWERS  
FINANCING AUTHORITY**

By: \_\_\_\_\_  
Chairman

**BANC OF AMERICA PUBLIC CAPITAL  
CORP, AS SERIES A ASSIGNEE AND AS  
INITIAL SERVICER**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**BANC OF AMERICA LEASING &  
CAPITAL, LLC, AS SERIES B ASSIGNEE**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **EXHIBIT A**

### **DESCRIPTION OF THE PROPERTY**

Real property in the State of California, County of San Diego Unincorporated and described as follows:

PARCEL A: (APN: 560-013-07-00 and 560-013-08-00

PARCEL(S) 1 AND 2 OF PARCEL MAP NO. 4027, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY AUGUST 21, 1975 AS FILE NO. 75-224074 OF OFFICIAL, RECORDS.

PARCEL B: APN: 560-013-02-00

THE WEST 33-1/3 FEET OF LOTS 7 TO 10, INCLUSIVE, IN BLOCK 13 OF THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO MAP NO. 348, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL C: APN: 560-013-03-00

THE WESTERLY 33 1/3 FEET OF THE EASTERLY 66 2/3 FEET OF LOTS 7 TO 10 INCLUSIVE IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL D: APN: 560-013-04-05

THE EASTERLY 33 1/3 FEET OF LOTS 7, 8, 9 AND 10 OF BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL E: APN: 560-013-05-15

THE SOUTHERLY 100 FEET OF LOT 11 AND THE SOUTHERLY 100 FEET OF THE WESTERLY EIGHT AND ONE-THIRD FEET OF LOT 12 EN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL F: APN: 560-013-06-00

LOTS 13 THROUGH 17 IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL G: APN: 560-013-09-00

LOT 6, THE NORTH 25 FEET OF LOTS 11 AND 12 AND THE EAST 16 2/3 FEET OF SOUTH 100 FEET OF LOT 12, ALL IN BLOCK 13 OF NATIONAL CITY, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF NO. 348 FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY, OCTOBER 2, 1882.

PARCEL H:

A. PERMANENT EASEMENT AND RIGHT-OF-WAY TO CONSTRUCT, RECONSTRUCT, MAINTAIN, OPERATE AND REPAIR AN UNDERGROUND EMERGENCY GENERATOR FUEL TANK, DESCRIBED AS FOLLOWS:

ALL THAT PORTION OF 12TH STREET, LYING NORTHERLY OF BLOCK 13 OF MAP NUMBER 348, IN THE CITY OF NATIONAL CITY, COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWESTERLY CORNER OF SAID BLOCK 13, BEING ALSO THE NORTHWESTERLY CORNER OF PARCEL 1 OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF PARCEL MAP NUMBER 4027; THENCE EASTERLY, ALONG THE NORTHERLY LINE OF SAID PARCEL 1.75 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING EASTERLY ALONG SAID NORTHERLY LINE, EIGHT FEET; THENCE LEAVING SAID NORTHERLY LINE, AT RIGHT ANGLES, NORTH SIX FEET; THENCE WESTERLY, PARALLEL WITH THE NORTHERLY LINE OF SAID PARCEL 1, EIGHT FEET; THENCE AT RIGHT ANGLES, SOUTH, SIX FEET TO THE TRUE POINT OF BEGINNING, CONTAINING 48 SQUARE FEET.

APN: 560-013-07-00; 560-013-08-00; 560-013-020-00; 560-013-03-00; 560-013-04-00;  
560-013-05-00; 560-013-06-00; 560-013-09-00

(End of Legal Description)

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,  
personally appeared \_\_\_\_\_,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

\_\_\_\_\_  
Signature of Notary Public